

**CITY OF MERCER ISLAND  
ORDINANCE NO. 19C-20**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON  
AMENDING CHAPTER 2.60 OF THE MERCER ISLAND CITY CODE TO  
REVISE THE CODE OF ETHICS FOR OFFICIALS; PROVIDING FOR  
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, 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 for integrity; and

WHEREAS, a Code of Ethics strengthens the quality of government through ethical principles that shall govern the conduct of the City’s elected and appointed officials; and

WHEREAS, a Code of Ethics for members of the City Council, the City’s boards and commissions, Council-appointed task groups or committees, and the City Manager was adopted in 2018 to promote public confidence in the integrity of local government and its fair operation; and

WHEREAS, the proposed amendments to the Code of Ethics provides better guidance for acceptance of gifts, interest in contracts prohibited and exceptions, incompatible service and confidential information, and personal or private interests; and

WHEREAS, the proposed amendments also establish an Ethics Officer provide for annual review of the code of ethics, review of training materials provided for education regarding the code of ethics, and advisory opinions concerning the code of ethics; and

WHEREAS, the proposed amendments provide a better process for complaints, investigations, hearings and enforcement related to violations of the Code of Ethics.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Chapter 2.60 MICC, Code of Ethics, Amended.** Chapter 2.60 MICC, Code of Ethics, is hereby amended as follows:

**CHAPTER 2.60  
CODE OF ETHICS**

SECTION:

- 2.60.010 Policy
- 2.60.020 Definitions ~~Compliance with laws~~
- 2.60.030 Acceptance of gifts ~~Code of Ethics Statement~~
- 2.60.040 Interest in Contracts Prohibited - Exceptions ~~Complaints~~
- 2.60.050 Incompatible Service – Confidential Information

2.60.060 Personal or Private Interests

2.60.070 Code of Ethics Statement

2.60.080 Ethics Officer

2.60.090 Advisory Opinions

2.60.100 Complaints, investigations, hearings and enforcement

### **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, council-appointed task groups or committees, and the city manager.

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:

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. "Official" as used in this chapter means all members of the city council, the city's boards and commissions, other council-appointed task groups or committees, and the city manager.~~

### **2.60.020 Definitions**

For the purpose of this Chapter:

COMPENSATION means anything of economic value, however designated, which is paid, loaned, advanced, granted, transferred, or to be paid, loaned, advanced, granted or transferred for or in consideration of personal services to any person.

CONTRACT means includes any contract or agreement, sale, lease, purchase, or any combination of the foregoing.

CONTRACTING PARTY means any person, partnership, association, cooperative, corporation, whether for profit or otherwise or other business entity which is a party to a contract with a municipality.

OFFICIAL or PUBLIC OFFICIAL means all members of the city council, the city's boards and commissions, other council-appointed task groups or committees, and the city manager of the city of Mercer Island.

### **~~2.60.020 Compliance with laws.~~**

~~Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include but are not limited to: the United States and Washington State Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and city ordinances and policies, including those listed below, as now enacted or hereafter amended:~~

~~Ch. 9A.72 RCW Perjury and interference with official proceedings~~

~~RCW 35A.13.020 Election of councilmembers— Eligibility— Terms— Vacancies— Forfeiture of office— Council chair~~

~~RCW 35A.13.050 City manager— Qualifications~~

~~Ch. 40.14 RCW Preservation and destruction of public records~~

~~RCW 42.17A.555 Use of public office or agency facilities in campaigns— Prohibition— Exceptions~~

~~RCW 42.17A.565 Solicitation of contributions by public officials or employees~~

~~Ch. 42.23 RCW Code of ethics for municipal officers— Contract interests~~

~~Ch. 42.36 RCW Appearance of fairness doctrine— Limitations~~

~~Ch. 42.56 RCW Public Records Act~~

### **2.60.030 Acceptance of Gifts**

No public official shall receive, accept, take, seek, or solicit, whether directly or indirectly, anything of economic value as a gift, gratuity, or favor, from any person if such public official has reason to believe the donor would not grant or give such gift, gratuity, or favor, but for such public official's office or position within the city of Mercer Island.

No public official shall receive, accept, take, seek, or solicit, whether directly or indirectly, anything of economic value as a gift, gratuity, or favor, from any person or from any officer or director of such person if such public official has reason to believe such person:

A. Has, or is seeking to obtain contractual or other business or financial relationship with the city of Mercer Island; or

B. Conducts operations or activities which are regulated by the city council, its committees or any board or commission of the city of Mercer Island; or

C. Has interests which may be substantially affected by such public official's performance or nonperformance of their official duty.

**2.60.040 Complaints.**

~~A. Complaints regarding:~~

- ~~1. Any official, except for the mayor or the city manager, shall be brought to the mayor, city manager and city attorney.~~
- ~~2. The mayor shall be brought to the deputy mayor, city manager, and city attorney.~~
- ~~3. The city manager shall be brought to the mayor, deputy mayor, and city attorney.~~

~~B. The mayor or deputy mayor, city manager and the city attorney shall cause the complaint to be investigated and shall make a recommendation to the city council as to the appropriate resolution of the complaint based on the findings and conclusions of the investigation.~~

~~C. If a complaint is filed against the mayor, deputy mayor, or city manager, that individual will not direct activities of the investigation.~~

**2.60.040 Interest in Contracts Prohibited - Exceptions**

No public official shall be beneficially interested, directly or indirectly, in any contract which may be made by, through, or under the supervision or direction of such public official, in whole or in substantial part, or which may be made for the benefit of his 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 exceptions specified in RCW 42.23.030 which are incorporated herein as if fully set forth. Remote Interest: A public official shall not be deemed to be interested in a contract as specified in this Section if they have only a remote interest in the contract and if the fact and extent of such interest is disclosed to the governing body of the city of Mercer Island of which they are a member and noted in the official minutes or similar records of the city prior to the consummation 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 public official having a remote interest therein.

As used in this Section "remote interest" means:

- A. That of a non-salaried officer of a nonprofit corporation;
- B. That of an employee or agent of contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- C. That of the landlord or tenant of a contracting party;
- D. That of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this Section shall be applicable to any public official interested in a contract, though their interest be only remote as hereinabove defined, who influences or attempts to influence, any other public official of the city of which they are an officer to enter into such contract.

Any contract made in violation of the above provisions shall be void and as otherwise provided in RCW 42.23.050 and the provisions thereof being expressly incorporated herein as if fully set forth.

### **2.60.050 Incompatible Service – Confidential Information**

No public official shall engage in or accept private employment or render services for any person or engage in any business or professional activity when such employment, service or activity is incompatible with the proper and faithful discharge of their official duties as such official, or when it would require or induce them to disclose confidential information acquired by them by reason of their official position. No such official shall disclose confidential information gained by reason of their official position, nor shall they otherwise use such information for their personal gain or benefit.

### **2.60.060 Personal or Private Interests**

Every public official who has a direct financial or other private or personal interest in any ordinance, resolution, contract, proceeding, or other action pending before the city council, or boards or commissions on which they are serving, shall promptly disclose such interest at the first publicly available opportunity when such matter is being considered by the city council, or board or commission as applicable. The disclosure, including the nature and extent of such personal or private interest shall be incorporated in the official minutes of the public proceedings.

Any such public official who is disqualified by reason of such personal, private or similar conflict of interest in any matter as hereinabove defined, shall, after having made the required disclosure as herein set forth, remove themselves from their customary seat during such debate and, by permission of the presiding officer, leave the meeting until such time as the matter at hand, from which such public official has been disqualified, has been disposed of in the regular course of business.

### **2.60.0370 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 comply with and sign the code of ethics statement acknowledging having read and understood the contents thereof.

### **2.60.080 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 also 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.

### **2.60.090 Advisory Opinions.**

A. Upon request of a public official, the ethics officer shall render written advisory opinions concerning the applicability of MICC 2.60.030, 2.60.040, 2.60.050, and 2.60.060 to hypothetical circumstances and/or situations solely related to the persons 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 public records officer, etc.

B. The ethics officer will endeavor to respond to requests for advisory opinions within forty-five days of submission of the request, or more rapidly if the requester expresses urgency in the request.

C. A public official's conduct based in reasonable reliance on an advisory opinion rendered by the ethics officer shall not be found to violate this code of ethics (and only this code of ethics), 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 public 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.

### **2.60.100 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 a public official. 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. The ethics officer shall make a determination of sufficiency within thirty days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate MICC 2.60.030, 2.60.040, 2.60.050, and/or 2.60.060. The ethics officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the ethics officer shall investigate the complaint as set forth below. A finding by the ethics officer determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS OFFICER. THE ETHICS OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE HEARING EXAMINER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

3. Dismissal. The ethics officer shall dismiss the complaint if the ethics officer determines that the violation was inadvertent; or a violation 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 public 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 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 public official complained against, of the ethics officer's determination. If, after investigation, the ethics officer has reason to believe that a material violation of MICC 2.60.030, 2.60.040, 2.60.050, and/or 2.60.060 has occurred, the city clerk shall give notice of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The public 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. At any time after a complaint has been filed with the ethics officer, the ethics officer may seek and make recommendations that the city council enter into a stipulation with the public official complained against. 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 public official complained against, a promise by the public 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 the public official complained against 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 mechanical 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 thirty 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 public 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 stipulations and recommendations from the ethics officer and findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. However, deliberations by the council may be in executive session pursuant to RCW 42.30.110(1)(f). The member of the council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving themselves.

D. Disposition. In the event the hearing examiner finds that the person against whom the complaint was made has violated the code of ethics, then the city council may take any of the following actions by a majority vote of the council. 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 below in subsection (E).

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 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 public official.

4. Reprimand. A reprimand shall be administered to the public 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 public 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 public 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 twenty calendar days before the scheduled appearance at which time a copy of the proposed letter of censure shall be provided to the public official. The letter of censure shall be read publicly, and the public official shall not 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 public official appears as required.

6. Removal—Member of Board or Commission or Other Appointed Task Group or Committee. In the event the public official against whom the complaint was made is currently a member of a city board or commission or other task group or committee, appointed by the city council, 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 public official from such board or commission effective immediately.

7. Civil Penalties. In addition to taking any actions above, the city council may also assess a civil penalty of up to one thousand dollars or to the extent that it can be reasonably determined. Any monetary penalty assessed civilly shall be placed in the city's general fund.

8. Contract Void. As provided by RCW 42.23.050, any contract made in violation of Chapter 42.23 RCW, "Code of ethics for municipal officers— contract interests," is void.

9. Other Penalties. In addition to taking any actions above, the city council may also impose restrictions or loss of a committee assignments, or loss of appointment as a representative of the city for any regional or multijurisdictional body, or membership on any board or commission which requires an appointment or confirmation of an appointment by the city council.

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 thirty 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, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the ethics officer.

G. Liberal Construction—Limitation Period

1. 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.

2. Any action taken under this code of ethics must be commenced within three years from the date of violation.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality does not affect the validity of any other section, sentence, clause or phrase of this ordinance.

**Section 3. Corrections.** The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 4. Effective Date.** This ordinance shall take effect and be in force 30 days after its passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 3rd day of December 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

\_\_\_\_\_  
Bio Park, Interim City Attorney

\_\_\_\_\_  
Deborah A. Estrada, City Clerk

Date of Publication: \_\_\_\_\_