



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND**

**AB 5628  
November 19, 2019  
Regular Business**

**AGENDA BILL INFORMATION**

<b>TITLE:</b>	AB 5628: Code of Ethics Revisions (1 <sup>st</sup> Reading)	<input type="checkbox"/> Discussion Only
<b>RECOMMENDED ACTION:</b>	Set Ordinance No. 19C-20 and Resolution No. 1572 to December 3, 2019 for second reading and adoption on the Consent Calendar.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

<b>DEPARTMENT:</b>	City Manager
<b>STAFF:</b>	Ali Spietz, Chief of Administration
<b>COUNCIL LIAISON:</b>	n/a
<b>EXHIBITS:</b>	1. Proposed Ordinance No. 19C-20 2. Proposed Resolution No. 1572
<b>CITY COUNCIL PRIORITY:</b>	n/a

<b>AMOUNT OF EXPENDITURE</b>	\$ n/a
<b>AMOUNT BUDGETED</b>	\$ n/a
<b>APPROPRIATION REQUIRED</b>	\$ n/a

**SUMMARY**

The agenda bill presents proposed amendments to Chapter 2.60 of the Mercer Island City Code to revise the City's Code of Ethics to clarify the process for responding to a complaint, removing references to State law, and adding guidance on the acceptance of gifts, interest in contracts, incompatible service, and disclosure of personal or private interests.

**BACKGROUND**

In 2018, the City Council adopted a Code of Ethics providing guidance for members of the City Council and the City's boards and commissions, and the City Manager ("Officials") in their roles with the City. The code 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.

The code also includes a Code of Ethics Statement that Officials shall agree to comply with upon taking office or being appointed. This statement was adopted by Resolution No. 1548 and can be updated by the Council when needed. Understanding and acknowledgement of these ethical principles will strengthen the quality of government and provide guidance to Officials in the performance of their official duties.

## REVISIONS

The Code of Ethics was adopted a year ago and following the filing of complaints earlier in the year, Council and staff determined a prescriptive process is needed for reviewing, investigating complaints and determining disposition of any violations of the Code of Ethics. The proposed revisions are presented in Exhibit 1 and detailed below.

Staff is recommending **removing references to State laws** pertaining to conflicts of interest, election campaigns, financial disclosures, and open processes of government. They are redundant and create confusion as the City is not the authority to investigate a complaint about these laws.

The addition of the following proposed sections provides guidance for Officials in their capacity when serving the City:

- **Acceptance of gifts** (Section 2.60.030) - Officials shall not receive, accept, take, seek, or solicit, anything of economic value from any person if such Official has reason to believe the donor would not grant or give such gift, but for such Official's office or position within the City of Mercer Island.
- **Interest in contracts prohibited** (Section 2.60.040) – Officials shall not be beneficially interested in any contract which may be made for the benefit of his office, or accept any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.
- **Incompatible service – confidential information** (Section 2.60.050) –Official shall not engage in any business when such business is incompatible with the with the proper and faithful discharge of official duties.
- **Personal or private interests** (Section 2.60.060) – Officials who have a financial or other private or personal interest in any action shall promptly disclose such interest at the first public meeting when such matter is being considered.

## Code of Ethics Statement

MICC 2.60.030 requires the adoption by resolution of a Code of Ethics Statement, which all officials, shall comply with and sign to acknowledge having read and understood its contents. The proposed revisions to chapter 2.60 MICC requires updating the Code of Ethics Statement. A resolution to adopt a revised version of the Statement is attached as Exhibit 2.

The following proposed amendments layout the complaint process, conduct of hearings, City Council action, and the disposition of the violation:

## Ethics Officer

The Council has requested additional code language to provide a process when a code of ethics complaint is filed with the City. The proposed amendments create the position of Ethics Officer. The **Ethics Officer is responsible for prompt and fair enforcement of the code of ethics** when necessary and reviewing and recommending edits to the code of ethics and training materials. The Seattle Ethics and Elections Commission serves in this role for the City of Kirkland and has tentatively agreed to do the same for Mercer Island.

### **Advisory Opinions**

The Ethics Officer will provide advisory options 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

### **Complaint Process**

Any person may submit a written complaint to the Ethics Officer, through the City Clerk, alleging one or more violations of this code of ethics by a public official. The ethics officer shall make a determination of sufficiency within thirty days of receipt of the written complaint.

Within 7 days, notice shall be given to the person who made the complaint and the public official complained against, if the complaint is sufficient or not.

If the complaint is sufficient, the Ethics Officer will conduct an investigation. If 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, a hearing will be held to determine if a violation has occurred. The public officer 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.

### **Conduct of Hearings**

All hearings on complaints found to be sufficient by the ethics officer shall be conducted in public by the Hearing Examiner. The City will contract with someone who has experience in code of ethics violations.

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. All testimony shall be under oath administered by the hearing examiner. The Hearing Examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits.

Within 30 days, the Hearing Examiner shall issue a final decision with findings of fact, conclusions of law, and recommended disposition.

### **City Council Action and Disposition**

The Council may 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)]; however, the public official complained against cannot participate. The City Council's final action shall be by majority vote in a public meeting. The Council may take any of the following actions:

1. The complaint may be **dismissed** without penalties.
2. 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. 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. 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. A letter of **censure** shall be a letter read personally to the person 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 person shall appear at a city council meeting at a time and place directed by the city council to receive the letter of censure.
6. In the event the individual 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 individual** from such board or commission effective immediately.
7. The city council may assess a **civil penalty** of up to one thousand dollars or three times the economic value of anything received in violation of this code of ethics or three times the economic value of any loss to the city, whichever is greater. Any monetary penalty assessed civilly shall be placed in the City's general fund.
8. 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.** The city council may impose a restriction, loss of a committee assignment, 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.

#### **NEXT STEPS**

Following direction from the City Council regarding the proposed revisions to the Code of Ethics, staff will bring the final version of the ordinance back for adoption on the Consent Calendar at the December 3 Council meeting. Staff will then work with the Seattle Ethics and Elections Commissions to designate them as the Ethics Officer and with a local lawyer to fill the Hearing Examiner role.

#### **RECOMMENDATION**

Set Ordinance No. 19C-20 and Resolution No. 1572 to December 3, 2019 for second reading and adoption on the Consent Calendar.