

**CITY OF WHITTIER, ALASKA
ORDINANCE #05-2017(S)**

AN ORDINANCE OF THE CITY OF WHITTIER AMENDING WHITTIER MUNICIPAL CODE CHAPTER 2.10 ENTITLED “CODE OF ETHICS FOR OFFICERS AND EMPLOYEES” TO CLARIFY WHAT CONSTITUTES A “SUBSTANTIAL FINANCIAL INTEREST,” LIMIT DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST TO SUBSTANTIAL FINANCIAL INTERESTS, INSTITUTE AN ANNUAL DISCLOSURE STATEMENT PROCESS, AND CLARIFY GENERAL PROHIBITIONS AGAINST CITY OFFICIAL AND EMPLOYEE CONDUCT AND DISCLOSURE OBLIGATIONS, REPEALING SECTION 2.70.025 ENTITLED “BEHAVIOR GENERALLY” AND AMENDING SECTION 2.08.230 ENTITLED “RULES-VOTING” TO REMOVE REDUNDANT AND CONTRADICTORY VOTING PROCEDURES REGARDING CONFLICTS OF INTEREST

WHEREAS, Whittier’s Code of Ethics provides detailed prohibitions regarding the conduct of City Officials, the City Manager, and City employees but the provisions are unclear and difficult to follow; and

WHEREAS, the City of Whittier is a small community where there are daily interactions between many of the business owners and City of Whittier officials that require conflict of interest provisions that protect the City from conflicts of interest and corrupt acts while permitting City officials to conduct business and actively participate in the Whittier community; and

WHEREAS, it is in the City’s best interest to amend the Code of Ethics to adopt clear definitions and realistic conflict of interest prohibitions;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whittier,

Section 1. Chapter 2.10 entitled “Code of Ethics for Officers and Employees” is amended to add Section 2.10.035 entitled “Purpose” to read as follows:

2.10.035 Purpose.

A. The proper functioning of democratic government requires ethical behavior by public officials. Ethics involves the commitment to take individual responsibility in creating a government that has the trust and respect of its citizens. The purpose of this chapter is to set reasonable standards of conduct for City officials and the City Manager so that the public may be assured that its trust in such persons is well placed and that the City officials and the City Manager themselves are aware of the standards of conduct demanded.

B. Whittier is a small community, with a limited number of people interested in serving as community leaders. To this end, it is not the intent of this chapter to set unreasonable barriers that deter aspirants from public service.

C. This chapter also defines conflict of interest, the standards stating when and to whom it applies, and the procedures for declaration and the proper action of the body when possible conflicts arise.

D. This chapter is also intended to establish a process which will ensure that complaints or inquiries regarding the conduct of City officials and the City Manager are resolved in the shortest practicable time in order to protect the rights of the public at large and the rights of the City and the City Manager.

E. The City Council intends this code to be interpreted to promote fair, honest, and impartial dealings with members of the public, to ensure proper use of City resources, and to avoid conflicts of interest.

F. This chapter does not create or prevent a private cause of action against any person, City official, or the City Manager.

Section 2. Chapter 2.10 entitled "Code of Ethics for Officers and Employees" is amended to add Section 2.10.038 entitled "Definitions" to read as follows:

2.10.038 Definitions.

As used in this chapter and unless otherwise provided or the context otherwise requires, the following terms shall have the meanings set forth in this section:

"Body of the City" means the City Council and the boards, commissions, committees and task forces appointed by the City Council or the Mayor.

"City Manager" means the person who is hired by the City Council to manage the City of Whittier or the Assistant City Manager when serving as the acting City Manager.

"City official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.

"Financial interest" means:

1. An interest currently held by that person or an immediate family member including:

a. Involvement or ownership in a business; or

b. Property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person receives a financial benefit;
or

c. An affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee in the organization.

2. Financial interest does not include:

a. Affiliation as unpaid volunteer with a legally recognized nonprofit organization; or

b. Financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

“Gratuity” means a thing having value given voluntarily or beyond lawful obligation.

“Hired consultants and contractors” means a person or organization hired by the City as an independent contractor and not as an employee.

“Immediate family member” means:

1. The spouse of the person;

2. A life partner or person cohabiting with the person; or

3. A child, including a stepchild and an adoptive child, of the person.

“Official action” means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction (when it is the equivalent of decision to take negative action), made while serving in the capacity of City official or City Manager, whether such action or inaction is administrative, legislative, quasi-judicial, advisory, or otherwise.

“Organization” means any business, corporation, partnership, firm, company, trust, association, or other entity, whether organized for profit or nonprofit.

“Person” means a natural person or an organization.

“Subject of the action” means anything under consideration for official action including but not limited to:

1. Appointments to any office or position of employment;

2. Any contract, project, property, or transaction subject to the action;

3. A platting, vacation or subdivision action;

4. An application for or other consideration of a license, permit, appeal, approval, exception, variance, or other entitlement;

5. A rezoning; and

6. Appeals and quasi-judicial proceedings.

“Substantial financial interest” means a financial interest that would result in a pecuniary gain or loss exceeding \$5,000 in a single transaction or more than \$10,000 in the aggregate in 12 consecutive months.

Section 3. Section 2.10.040 entitled “Council voting” is amended to read as follows:

2.10.040 Council voting-Conflicts of interest-City Council members-

~~A. All members of the Council shall vote, unless a Council member has a direct or indirect financial interest in the motion. Council members shall disclose a financial interest in a motion before the Council votes on that motion.~~

A. Immediately after the Council approves the agenda at a regular or special meeting, each Council member shall declare any financial interest in a matter appearing on the agenda. Any Council member or member of the public present at the meeting may question whether another Council member has a financial interest in a matter appearing on the agenda, ~~and should be excused from participating in the matter.~~

B. After a Council member discloses a financial interest or another Council member or member of the public present at the meeting questions another Council member’s financial interest in a matter, the Council shall determine by roll call vote if the Council member has a substantial financial interest in the matter. ~~Council member’s vote is a conflict of interest. If another Council member or someone from the audience questions or challenges a member’s vote, Council shall act upon this with a roll call vote excluding the questioned member from that vote.~~

C. If the Council determines that a Council member has a substantial financial interest in a matter, the Council member shall not participate in the discussion of the matter or vote on the matter.

D. If the Mayor is ruled to have a substantial financial interest in a matter before the Council, the Mayor shall yield the chair to the vice mayor during the Council discussion or vote on the matter, and shall not vote on or participate in discussion of the matter.

Section 4. Chapter 2.10 entitled “Code of Ethics for Officers and Employees” is amended to add Section 2.10.045 entitled “Conflicts of interest-Board and Commission members” to read as

follows:

2.10.045 Conflicts of interest-Board and commission members-

A. Immediately after a City board or commission approves the agenda at a regular or special meeting, each member having a financial interest in a matter appearing on the agenda shall declare the financial interest. Any member may question whether another member has a financial interest in a matter appearing on the agenda and should be excused from discussing and voting on the matter.

B. The presiding officer shall determine if the member alleged to have the financial interest in the matter has a substantial financial interest in the matter. If the presiding officer determines the member has a substantial financial interest in the matter, the presiding officer shall prohibit the member from voting on or participating in any discussion on the matter.

C. Any member of a City board or commission may disclose a financial interest in a matter and choose to excuse himself or herself from voting on and participating in discussion regarding that matter.

D. The decision of the presiding officer on whether a board or commission member should be excused due to a substantial financial interest may be overridden by a majority vote of the board or commission.

Section 5. Chapter 2.10 entitled “Code of Ethics for Officers and Employees” is amended to add Section 2.10.048 entitled “Conflicts of interest-Other city officers and employees” to read as follows:

2.10.048 - Conflicts of interest—Other city officers and employees.

A city officer or employee, other than a council member or a member of a city board or commission, may not participate in an official action in which the officer or employee has a substantial financial interest.

Section 6. Section 2.10.080 entitled “Filing of statements by nonsalaried officers” is amended to read as follows:

2.10.080 Filing of statements by ~~City officials, nonsalaried officers.~~

~~Every nonsalaried elected or appointed City officer or official shall, upon assuming his or her duties, file with the City Clerk a written statement disclosing any direct or indirect interest in any firm, corporation, association or enterprise which by reason of such membership on a City board, committee, or commission benefits him or her in a manner~~

~~different from that available to the public generally. Every official or officer subject to this section shall supplement his or her written disclosure statement within 10 days of acquiring or becoming aware of any interest subject to disclosure under this section.~~

A. City officials and the City Manager must annually file a financial interest disclosure form prepared by the City Clerk and approved by City Council.

B. The financial interest disclosure must be filed by November 1st each year. A newly appointed official must file a statement within 30 days after taking office. Each candidate for elected City office must file a disclosure statement at the time he or she files a declaration of candidacy, except an incumbent seeking reelection with a current disclosure statement on file. Refusal or failure of a candidate to file the required disclosure statement before the end of the time period for filing declarations of candidacy shall require that the candidate's declaration of candidacy be rejected and the candidate disqualified.

C. The disclosure statement must be true, correct and complete and shall be signed under oath or affirmation, or certified to be true under penalty of perjury.

d. The disclosure statement shall be filed with the City Clerk and shall be open to public inspection and copying at the office of the City Clerk. The disclosure statement will not be sent to the Alaska Public Offices Commission.

Section 7. Chapter 2.10.130 entitled "Prohibited acts" is amended to read as follows:

2.10.130 Prohibited acts.

A. No City officer or employee shall engage in any act in conflict with the performance of his official duties and shall disqualify himself from participating in any official action in which he has a substantial financial interest.

B. The following prohibited acts are deemed to be in conflict with the performance of an officer or employee's official duties. No officer or employee shall:

1. Fail to disclose that he possesses, ~~directly or indirectly,~~ a substantial ~~or controlling~~ financial interest in **an organization** ~~any corporation, firm, association or enterprise~~ doing business with the City;

2. **Fail to disclose a substantial financial interest as required under this chapter.** ~~Have a financial or other private interest in any legislation or other matter coming before the Council, and if a Councilman, fail to disclose such interest on the records of the Council or disqualify himself from voting on such matter by stating the nature and extent of such interest, or if an officer or employee, participate in discussion with or give an official opinion to the Council as to any such matter and fail to disclose such interest on the records of the Council;~~

3. Receive or acquire any substantial financial interest in any sale to or purchase from the City of any goods or services ~~service or property~~ with knowledge at the time of receiving or acquiring such interest that the City intends to purchase or sell such goods or services ~~property or service~~;

4. Accept any retainer, gift, or favor from any person or organization ~~person, firm, corporation, association or enterprise~~ having dealings with the City when that retainer, gift or favor constitutes a substantial financial interest and when the City official or employee has knowledge ~~with the knowledge~~ that such retainer, gift or favor is given with the intent to obtain special consideration as to any action by such officer or employee in his official capacity; ~~provided, however, that any such officer or employee who is a candidate for public office may accept otherwise lawful campaign contributions and services in connection with any such campaign;~~

5. Have a substantial financial interest, whether personally or through immediate family or close relatives, in an organization ~~a firm, corporation, association or enterprise~~ doing business with the City and influence or attempt to influence the City's ~~the~~ selection of, or conduct of business with such organization ~~firm, corporation, association or enterprise~~ by the City;

6. Engage in or accept private employment or render service for private industry or other governmental entities which is incompatible with the proper discharge of official duties or impairs his independence of judgment or action in the performance of such official duties;

7. Appear on behalf of a private interest before any City agency, board or commission or represent a private interest in any action or proceeding against the interest of the City in any litigation to which the City is a party; provided, that this subsection shall not apply to:

a. ~~Persons receiving no compensation from the City,~~

b. ~~Any member of the Council appearing before governmental agencies on behalf of or as a representative of constituents in the course of his official duties or performing public or civic obligations without additional compensation therefor, or~~

e. ~~Any officer or employee appearing on his own behalf or representing himself as to any matter in which he has a proprietary interest; provided such proprietary interest is fully disclosed and the officer or employee does not act or attempt to act in any official capacity with respect to such matter;~~

8. Use, request, or permit the use of City-owned vehicles, equipment, materials or property for personal use or profit unless such use is available to the public generally; provided, that this subsection shall not apply to the use of City-owned vehicles, equipment, materials or property provided to such officer or employee in accordance with municipal policy for the conduct of official City business;

~~9. As to any matter or proceeding coming before a City agency, board or commission of which he is a member, fail to disqualify himself from acting therein when such matter or proceeding involves any person who is or has been a client of his or his firm or partnership within the 12-month period immediately preceding the date of such action;~~

~~610. Disclose confidential information concerning the property, government, or affairs of the governmental body by which he or she is employed or appointed without proper legal authorization, or use such information to advance the financial or other private interest of himself or others;~~

~~711. Serve as a member of the City Council and have either (a) paid employment with the City other than payment for such Council membership or (b) a substantial or controlling interest in a corporation, firm, association or enterprise doing business with the City;~~

~~812. Simultaneously be a paid City employee and a candidate for election to the City Council or Mayor. Before a paid employee may file a petition for election, he or she must first terminate such employment with the City. This provision is not intended to prohibit payment by the City of a salary to the Mayor;~~

~~13. Be employed or serve in violation of WMC 2.24.132 or 2.32.705.~~

Section 7. Section 2.70.025 entitled "Behavior generally" is repealed.

Section 8. Section 2.08.230 entitled "Rules-Voting" is amended to read as follows:

2.08.230 Rules – Voting.

A. The presiding officer shall declare all votes, but if any member doubts a vote, the presiding officer, without further debate upon the question, shall request the members voting in the affirmative and negative respectively to so indicate, and he or she shall declare the result.

B. The vote upon all matters considered by the Council shall be taken by yes or no votes which shall be entered upon the record, except that if the vote is unanimous, it shall be necessary only to so state.

C. Every member who shall be present when a question is put, where he or she is not disqualified under this code by personal interest, shall vote, ~~unless the Council for special reason excuses him. Applications to be so excused must be made before the vote, and shall be decided without debate.~~

D. Anything to the contrary in these rules notwithstanding, in all cases where an extraordinary majority is not required, and when no motion is before the Council, the chairman may, in lieu of calling for or waiting a motion to be made, put the question in the following form: "Without objection, it will be so ordered." If no objection is heard, he

shall announce: "It is so ordered," which will have the same effect as if a motion is reasonable expressed when the question is put, the chairman shall not proceed further under this rule, but instead shall call for a motion, which motion shall be handled in the regular manner.

~~E. No member of the Council may discuss or vote on any question in which the member has a direct or indirect substantial financial interest. Direct or indirect financial interest shall be disclosed prior to the beginning of debate on the question for a ruling on a request from the member with the financial interest to be excused from discussion and a vote.~~

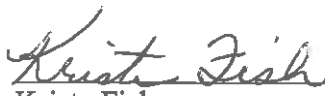
~~1. The presiding officer shall rule on a request by a member of the governing body to be excused from vote;~~

~~2. The decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the Council. If there are not at least four Council members in attendance who are qualified to vote, the matter shall be tabled until the next regular or special meeting at which four Council members qualified to vote on the matter are in attendance; and~~

~~3. A municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.~~

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 21st day of November, 2017.

ATTEST:



Krista Fish
CITY CLERK



Daniel Blair
MAYOR

Ayes: 7
Nays: 0
Absent: 0
Abstain: 0

