

**CITY OF WHITTIER
ORDINANCE #02-2017**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA,
AMENDING CHAPTER 2.10 AUTHORIZING A HEARING OFFICER TO PRESIDE IN
HEARINGS REGARDING VIOLATIONS OF CHAPTER 2.10 ENTITLED "CODE OF
ETHICS" OF THE WHITTIER MUNICIPAL CODE, REPEALING THE BOARD OF
ETHICS, AND UPDATING THE ADMINISTRATIVE HEARING PROCESS TO
CREATE A MORE SIMPLE APPEAL PROCESS**

NOW, THEREFORE, The Whittier City Council ordains:

Section 1. Chapter 2.10, entitled "Code of ethics", is hereby amended to read as follows:

2.10.010 Short title.

This chapter shall be known as the "Ceode of Eethics."

2.10.020 Applicability.

This Ceode of Eethics shall apply to all elected officials of the City, all employees and appointed officers of the City, and all paid or unpaid members of boards and commissions of the City.

2.10.030 Construction.

This Ceode of Eethics shall be liberally construed in favor of protecting the public's interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for City employees and officials.

2.10.040 Council voting.

A. All members of the Council shall vote, unless a council member~~someone~~ 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.~~This shall be stated before the issue is voted upon.~~

B. After a council member discloses a financial interest, ~~t~~The Council shall determines by roll call vote if the council member's said person'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.

2.10.050 Declaration of intent by officers.

[ADDED LANGUAGE BOLD AND UNDERLINED; DELETED LANGUAGE STRICKEN THROUGH]

A pPersons on any Council, a board, commission or committee shall declare **any services or goods he or she provides the City or any potential applications he or she intends to submit to the City to provide services or goods to the City in the future. For purposes of this section, "goods and services" means goods or services provided in exchange for financial gain,** ~~their intent upon application for any positions to bid on or provide any service, which involves monetary or substantial personal gain with the City.~~

2.10.060 Records of payment to be public record.

All records of payment received from the City shall be a matter of public record.

2.10.070 Conflict of interest generally.

No **electd or appointed** City officer, **official** or employee shall intentionally engage in any act in conflict with the performance of his/her official duties and shall disqualify himself/herself from participating in any official action in which he/she has a substantial financial interest.

2.10.080 Filing of statements by nonsalaried officers.

Every nonsalaried **electd or appointed City officer or official** ~~of any City board, commission or committee shall,~~ upon assuming his **or her** duties, file with the ~~Board of Ethics~~ **eCity Clerk** a **written** statement ~~in writing~~ 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 ten days of acquiring or becoming aware of any interest subject to disclosure under this section,** ~~and shall thereafter upon acquiring or becoming aware of any such interest file a similar statement with the Board of Ethics.~~

2.10.090 Board of Ethics — Created — Membership.

~~There is created a Board of Ethics consisting of three members who shall be the Mayor, or the Council member duly appointed as the designee of the Mayor, and two lay members of the public appointed by the Council, and two lay members of the public appointed by the Council to serve as alternate members. If the conduct of any of the members of the Board of Ethics is questioned the Council shall appoint a substitute member for the purpose of that investigation only.~~

2.10.095 Appointment.

~~By February 1st of each year the City Council shall appoint two public citizens to the Board of Ethics and two public citizens to serve as alternate members to the Board of Ethics. The term of office of the public citizens shall be one year.~~

2.10.100 Board of Ethics — Powers and duties.

~~The powers and duties of the Board of Ethics shall be as follows:~~

- ~~A. To establish administrative rules and procedures for the conduct of its business, to conduct preliminary investigations, to make reports to the~~

~~Council, and to conduct such further hearings as provided for in WMC 2.10.110;~~

~~B. To make expenditures in accordance with the annual budget adopted by the Council and to utilize the services of such staff as may be made available to said board;~~

~~C. To consider questions as to ethical conduct, conflicts of interest, and the application of ethical standards set forth in this code, and upon the written request of any City officer or employee, or without such request if in the public interest, issue its advisory opinion in writing as to any such question;~~

~~D. To make recommendations to the Council for amendments to this code and for such other legislation affecting the subject matter of this code as said board may deem necessary or desirable;~~

~~E. To provide a continuing program of education, assistance, and information to City officers and employees with regard to ethical conduct.~~

~~All officers, employees, departments and agencies of the City shall make available to the Board of Ethics all books, papers, documents, information, and assistance requested by said board and pertinent or material to any inquiry or investigation being conducted by said board in the performance of its duties under this code.~~

~~2.10.110 Board of Ethics—Conduct of hearings.~~

~~Whenever a preliminary investigation has been made by the Board of Ethics in response to a written complaint, instructions from the Council, or on its own initiative, and a report of such investigation has been rendered to the Council, then the Council may authorize the Board of Ethics to conduct a formal hearing on the matter. In this event the Board of Ethics shall have the power to administer oaths and affirmations, examine witnesses, and compel attendance of persons, and production of documents, papers, books, accounts, letters, and records by subpoena. Any person summoned to appear before such board and give evidence shall have the right to be represented by counsel. Any person against whom a complaint or violation of ethical standards has been made or whose conduct is the subject of investigations by the board may demand and shall be entitled to a hearing, which is open to the public.~~

2.10.111 complaint and response.

A. Any person may file a complaint with the Clerk alleging that a public official has violated this chapter. The complaint must:

- 1. Be a written statement of the charge setting out in ordinary and precise language the acts or omissions with which the respondent is charged;**
- 2. Specify the subsection(s) of WMC 2.10 that the respondent is alleged to have violated; and**
- 3. Contain a notarized statement of verification providing that the information, statements, and allegations contained in the**

complaint are true to the best of the person filing the complaint's knowledge and belief.

- B. A complaint alleging a violation must be filed within two years from the date the complainant(s) knew or should have known of the action alleged to be a violation, and no later than five years after the alleged violation occurred.
- C. The clerk shall serve the respondent, who is the officer or official against whom the complaint is filed no more than two business days after accepting a complaint as sufficient under section 2.10.115 of this chapter.
- D. The respondent shall have thirty days to respond to the complaint. The response must:
 - 1. Expressly deny or admit to the specific allegations in the complaint; and
 - 2. Contain a notarized statement of verification providing that the information, statements, and allegations contained in the response are true to the best of the the person filing the response's knowledge and belief

2.10.113 Confidentiality.

- A. Complaints filed under WMC 2.10 are confidential and may not be disclosed to any person except the city clerk.
- B. It is not a violation of this section for a person to contact or retain an attorney or to cooperate in a criminal investigation if one is proceeding.
- C. All proceedings and records shall remain confidential unless the respondent requests a public hearing or until the hearing officer files with the council its findings of fact and conclusions of law concerning the complaint.

2.10.114 Initial screening

- A. Upon receipt of a complaint regarding a public official, the City Clerk shall screen the complaint and determine if the complaint:
 - 1. States with particularity a violation of this chapter; and
 - 2. The alleged violation occurred within the time period required under this chapter.
- B. If the complaint meets the requirements of subsection A, the City Clerk shall notify both the public official and the person filing the complaint that the complaint has been accepted and serve a copy of the complaint on the public official.

- C. The notice shall also specify that a response by the public official must be filed within 30 calendar days from the date of the Clerk's written notice. If the deadline falls on a weekend or full-day City holiday, then the notice shall be due on the next business day. The notice shall also inform the public official of the right to submit affidavits or other written evidence in support of the public official's response. Misrepresentation of a material fact in a response is a violation of this chapter. Failure to timely respond shall be considered an admission of the allegations in the complaint, and the Clerk shall notify the complainant and respondent the allegations of the complaint are deemed admitted.
- D. The respondent may appeal to the hearing officer any deemed admission of the allegations of the complaint, for good cause, by filing an appeal with the Clerk within 15 days after the date of notice of the deemed admission. The appeal must state all facts and legal grounds for failure to respond timely.
- E. If the City Clerk determines that the complaint is insufficient under this section, the Clerk shall make a written determination indicating the basis for this determination and shall distribute the determination to the public official and the complainant. The Clerk's determination is final. The complainant may appeal any dismissal by the Clerk to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- F. If the City Clerk is the subject of the complaint, the complaint should be filed with the City Manager who shall perform the responsibilities of the Clerk for under this chapter.

2.10.115 Hearing officer.

- A. If the City Clerk determines the complaint is sufficient, the Clerk shall send the complaint to the hearing officer selected by the city attorney. The hearing officer shall be a private attorney or an individual trained as an administrative hearing officer. The hearing officer shall not be an employee of the City of Whittier..
- B. The Clerk will furnish to the hearing officer the complaint and response, if any, or any appeal.
- C. The hearing officer shall schedule a hearing within ninety days after the date of the clerk's notice of sufficiency. The hearing officer may extend this deadline for good cause.

2.10.118 Hearing notice.

- A. The Clerk shall serve on the complainant and the respondent a notice of hearing setting out the time and place of hearing and the schedule for any preliminary matters. This notice shall include a statement of the right to

provide written evidence and oral testimony. The complainant and the respondent shall also be informed of the right to be represented at the hearing.

- B. The hearing officer shall determine if the complainant has proven by the preponderance of the evidence that the allegations in the complaint are true.
- C. If the respondent has failed to answer the allegations of the complaint or has admitted the allegations, the hearing officer shall prepare findings of fact and conclusions of law based on the written record.

2.10.120 Advisory opinions.

Any official or employee may request an opinion from the ~~board~~-city attorney relating to any situation involving such official or employee, which may give rise to the possibility of conflict of interest under this code. Such requests shall be in writing, shall set forth the pertinent facts and shall be signed by the official or employee making the request, and shall, if requested by the officer or employee, be held in confidence and no disclosure thereof shall be made except as provided herein.

2.10.121 Service by mail and filing.

- A. All motions or requests shall be served upon the opposing party. If service by mail is used, three days will be added for response time from the date of mailing. The party must certify the date mailed on the document. If the deadline falls on a weekend or holiday, the deadline shall fall on the next city business day.
- B. All documents shall be filed with the Clerk.

2.10.122 Hearing.

- A. All hearings shall be before the hearing officer who shall preside.
- B. The hearing officer may administer oaths, hold hearings, and take testimony. The hearing officer may, on their own or in response to a motion by a party to the hearing, request the presence of witnesses and the production of records, books, and papers at the hearing.
- C. The complainant and the respondent may each present opening statements setting out the matters they intend to prove. The complainant shall proceed first with his or her evidence and the respondent shall follow, setting forth his or her evidence. The complainant and the respondent may make closing arguments.
- D. The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing, but the hearing officer's findings of fact must be based on reliable and relevant evidence.

- E. At the conclusion of the presentation of evidence and closing arguments, the hearing officer shall consider the allegations, the evidence supporting them, and the respondent's evidence.

2.10.123 Findings of fact and conclusions of law.

- A. The hearing officer shall enter findings of fact and conclusions of law no later than 30 days after the conclusion of the hearing. The hearing officer shall notify the parties and their attorneys if an extension is required to permit the preparation of findings of fact and conclusions of law.
- B. If the hearing officer finds that no violation has occurred, the complaint shall be dismissed. The Clerk shall serve the notice of dismissal on the complainant, the respondent, and attorneys. The notice of dismissal remains confidential.
- C. If the hearing officer finds that a violation of this chapter has been committed, the hearing officer shall prepare and submit its findings of fact and conclusions of law to the City Council.
- D. The findings of fact and conclusions of law are final and conclusive.
- E. If the hearing officer determines that no violation has occurred, or otherwise dismisses the complaint for substantive reasons, the hearing officer may award full or partial attorney fees to a public official who reasonably incurred those costs defending the complaint. This award may be made against the City only to the extent that the City Council has appropriated funds for that purpose.

2.10.124 Appeal of findings of fact and conclusions of law and penalty.

- A. If the hearing officer imposes a penalty with its decision, appeal of the findings of fact and conclusions of law and the penalty may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- B. Notice of an appeal must be filed with the superior court within 30 days of the imposition of the penalty.

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 interest in any corporation, firm, association or enterprise doing business with the City;
2. 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 financial interest in any sale to or purchase from the City of any service or property with knowledge at the time of receiving or acquiring such interest that the City intends to purchase or sell such property or service;
4. Accept any retainer, gift, or favor from any person, firm, corporation, association or enterprise having dealings with the City 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 financial interest, whether personally or through immediate family or close relatives, in a firm, corporation, association or enterprise doing business with the City and influence or attempt to influence the selection of, or conduct of business with such 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
 - c. 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;
10. Disclose confidential information concerning the property, government, or affairs of the governmental body by which he is employed without proper legal authorization, or use such information to advance the financial or other private interest of himself or others;
11. 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.
12. 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.

2.10.140 Failure to provide information.

It is unlawful for any person duly summoned to attend as a witness before the ~~Board of Ethics~~ **hearing officer** to fail or refuse, without lawful excuse, to attend pursuant to such summons, or to willfully refuse to be sworn or to affirm or to answer any material or proper question, or to produce, upon reasonable notice, any material or proper documents, papers, books, accounts, letters or records in his possession or under his control, or having been duly sworn to tell the truth, to knowingly give false testimony as to any material matter.

2.10.150 Cancellation of contracts.

Any contract between the City and another party shall be voidable or rescindable at the option of the Council at any time within a period of one year from the date of execution

of such contract, if any officer or employee of the City has any interest in such contract and does not disclose such interest.

2.10.160 Violations by appointed officers – Penalty.

If the ~~Board of Ethics shall~~ hearing officer determines that any appointed City officer or employee has violated the ethical standards set forth in this code, ~~said board~~ the hearing officer shall deliver a copy of its written decision to the Mayor and Council and such City officer or employee who has violated the ethical standards together with the ~~board's~~ hearing officer's recommendation for disciplinary action. In addition to any other penalty herein or otherwise provided by law, violation of such ethical standards by a nonelected officer or employee shall be cause for suspension, discharge, or removal from office, or such other disciplinary action as the Council may determine.

2.10.170 Violations by elected officials and paid or unpaid members of boards and commissions – Penalty.

If the ~~Board of Ethics shall~~ hearing officer determines that an elected official or paid or unpaid member of a board or commission has violated the ethical standards as set forth in this code, ~~said board~~ he or she shall deliver a copy of its written recommendations to the Council which may take such action as it is empowered to do by law, including but not limited to removal from office and censure action.

2.10.180 Violation – Reprimand and/or dismissal.

Any person in violation of this code shall be subject to censure, reprimand, and/or immediate dismissal from office, in addition to any other applicable penalty under law.

Section 3. Classification. This Ordinance is a permanent code ordinance.

Section 4. Effective Date. This ordinance shall take effect immediately upon adoption.

ENACTED this 16th day of May 2017.

Daniel Blair

Daniel Blair
Mayor

ATTEST:
Jennifer Rogers
Jennifer Rogers
City Clerk

Ayes: 6
Nays: 0
Absent: 1
Abstain: 0