

ORDINANCE NO. 528

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, AMENDING THE WOODINVILLE ETHICS CODE IN CHAPTER 2.36 OF THE WOODINVILLE MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Council adopted Ordinance No. 125 in 1995 creating the Woodinville Ethics Code providing standards of ethical conduct for city officials and employees, an enforcement procedure and penalties; and

WHEREAS, the Woodinville City Council has determined that certain amendments are necessary to clarify the role of the City Manager and the role of the Hearing Examiner in enforcement of the code if the charge relates to an employee; and to provide consistency between the code and state statutes; and

WHEREAS, after hearing the recommendation of staff, study and deliberation the City Council has determined the following amendments to be necessary and in the public interest;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Code of Ethics. WMC Section 2.36.020 is hereby amended to read as follows (additions shown by underline and deletions by interlineations):

2.36.020 Code of ethics.

The purpose of the code of ethics is to assist City officials and employees to establish guidelines to govern their own conduct as it relates to official City business. The code is also intended to help develop traditions of responsible public service. This code shall apply to all members of the City Council, Planning Commission, and other City Boards and Commissions as well as all City employees. An official or employee shall be deemed to have violated this code if he or she:

- (1) Receives or has any financial interest in any sale to or by the City of any service or property when such financial interest was received with the prior knowledge that the City intended to purchase such property or obtain such service;
- (2) Accepts or seeks for others any service, information or thing of value on more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City;
- (3) Accepts any gift or favor from any person, firm or corporation having any dealings with the City if he or she knows or has reason to know that it was intended to obtain special consideration; ~~provided, however that this prohibition shall not apply to gifts of minimal value under \$10.00 and symbolic gifts not intended to financially benefit the recipient;~~
- (4) Influences the selection of or the conduct of business with a corporation, person or firm having business with the City if he or she personally or through household relatives has financial interest in or with the corporation, person or firm;

(5) Is an employee, officer, partner, director or consultant of any corporation, firm or person having business with the City, unless he or she has disclosed such relationship as provided by this chapter; provided, that nothing herein shall be deemed to apply to consultants who render professional advice to corporations, firms or persons on matters unrelated to the business with the City. This provision shall not apply if the official or employee disqualifies himself or herself from all participation in the City business with the corporation, firm or person;

(6) Engages in or accepts private employment or renders services for private industry when such employment or service is incompatible with the proper discharge of his or her official duties, would impair his or her independence of judgment or action in the performance of his or her official duties, or would require or induce him or her to disclose confidential information acquired by reason of his or her official position;

(7) Appears in behalf of a private interest before any regulatory governmental agency against the interest of the City, or represents a private interest in any action or proceeding against the interest of the City in any litigation to which the City is a party, unless he or she has a personal interest and this personal interest has been disclosed to the regulatory governmental agency. A City Councilmember may appear before regulatory governmental agencies on behalf of constituents in the course of his or her duties as a representative of the electorate or in the performance of public or civic obligations; however, no official or employee shall accept a retainer or compensation that is contingent upon a specific action by a City agency;

(8) Directly or indirectly possess a substantial or controlling interest in any business entity which conducts business or contracts with the City, or in the sale of real estate, materials, supplies or services to the City, without disclosing such interest as provided by this chapter. An interest is not a substantial interest if such interest does not exceed one-tenth of one percent of the outstanding securities of the business concern; or, if the interest is an unincorporated business concern, one percent of the net worth of such concern, or the financial interest of a corporation, person or firm does not exceed five percent of the net worth of the employee and his or her household relatives;

(9) As a City Councilmember, has a financial or other private interest in any legislation or other matters coming before the council and fails to disclose such an interest on the records of the City Council. This provision shall not apply if the City Councilmember disqualifies himself or herself from voting by stating the nature and extent of such interest. Any other official or employee who has a financial or other private interest, and who participates in discussion with or gives an official opinion to the City Council and fails to disclose on the records of the City Council the nature and extent of such interest is in violation of this chapter;

(10) Violates any ordinance or resolution of the City;

(11) Discloses confidential information gained by reason of his or her official position or otherwise uses such information for his or her personal gain or benefit;

(12) Makes any false statement or representation of any public record or document in a willful disregard of the truth of such statement or representation;

(13) Request or permit the use of City-owned vehicles, equipment, materials or property for personal convenience, improper purposes, or profit, except when such services are available to the public generally or are provided as City policy for the use of such official or employee in the conduct of official business;

(14) Grants any special consideration, treatment or advantage beyond that which is available to every other citizen in similar circumstances;

(15) Knowingly and in willful disregard of WMC 2.36.025 violates or influences any other person to violate the nepotism policy set forth in WMC 2.36.025;

(16) Violates any provision of Chapter 42.20 or Chapter 42.23 of the Revised Code of Washington;

(17) Violates the Appearance of Fairness Doctrine in Chapter 42.36 of the Revised Code of Washington;

Section 1. Section 2. Disclosure. WMC Section 2.36.030 is hereby amended to read as follows

(additions shown by underline and deletions shown by interlineations):

Section 2.

Section 3. 2.36.030 Disclosure.

Disclosure as required by this chapter shall be in writing and filed with the City Clerk. Disclosure shall be made as soon as the person becomes aware of the facts giving rise to the disclosure requirements. An oral disclosure made at a regular or special city council meeting shall constitute compliance with this section. The oral disclosure shall be included in the official minutes of the council meeting.

Section 3. Civil Penalties. WMC Section u is hereby amended to read as follows (additions shown by underline and deletions shown by interlineations):

2.36.040 Civil penalties.

(1) Any person willfully violating this chapter is guilty of a misdemeanor and is subject to the criminal penalty set forth in WMC Section 1.03.010. ~~and Any violation of this chapter is subject to the civil penalties provided herein in WMC Section 1.03.010 for the negligent violation of this chapter.~~ The election of pursuing criminal penalties is subject to the prosecutorial discretion of the City's prosecuting attorney(s). The City may initiate a civil action through the office of the City Attorney, or other authorized agent.

(2) An employee of the City found guilty of a violation of this chapter is subject to ~~civil penalties discipline imposed by the City Manager,~~ up to and including termination from employment. ~~and/or loss of pay not to exceed one month's salary.~~

(3) Any member of a City Board or Commission found guilty of a violation of this chapter may be suspended or removed from office by action of the City Council.

(4) Any member of the City Council found guilty of a violation of this chapter in addition to any other penalties permitted by law may receive a written reprimand in a letter approved by the majority vote of the other City Council members or a censure by written statement approved by majority vote of the other City Council members and administered personally to the individual council member in open session of the City Council.

(4 5) In addition to the sanctions for aiding, abetting, seeking or requesting a violation of this chapter, any person or organization which willfully attempts to secure preferential treatment in its dealing with the City by offering any valuable gifts, whether in the form of services, loan, thing or promise, or any other form to any City official or employee, shall have its current contract with the City canceled and shall not be able to bid on any other City contracts for a period of two years.

Section 4. Responsibilities of Hearing Examiner. WMC Section 2.36.050 is hereby amended to read as follows (additions shown by underline and deletions shown by interlineations):

2.36.050 Responsibilities of Hearing Examiner.

(1) There is hereby delegated to the Hearing Examiner, the responsibility set forth in WMC 2.36.060 relating to enforcement procedures, except as to employees of the City of Woodinville in the administrative service under the City Manager. Once such allegation or complaint has been filed with the office of the City Clerk and notice of such filing has been transmitted to the Hearing Examiner which notice shall not set forth any names or details concerning the complaint, then the Hearing Examiner shall conduct an investigation; provided, that in the event said complaint shall involve in some manner the office of the Hearing Examiner, the matter shall be referred to the City Attorney for investigation, all in accordance with the procedures outlined herein.

(2) The Hearing Examiner is also authorized to issue advisory opinions upon request of City officials ~~and employees~~ concerning the applicability of this chapter to specific factual situations. Administrative employees under the supervision of the City Manager concerned with the applicability of this chapter to specific factual situations may address their concerns to the City Manager or the Manager's designee.

~~(3) In all instances of complaints or reports of allegations of impropriety involving City employees, the results of the investigation shall be referred to the City Manager for any appropriate disciplinary action consistent with the provisions of the ordinances of the City of Woodinville involving City personnel.~~

Section 5. Enforcement procedures.

2.36.060 Enforcement procedures.

(1) Any person who has knowledge of a violation of this code of ethics by a person other than an administrative employee under the supervision of the City Manager, may make a signed written report of the same to the City Clerk. The fact that a report has been received, the contents of the report, and the identity of the person making the report shall remain confidential until such time as the Hearing Examiner has made an initial threshold determination that probable cause exists to believe that a violation of the code of ethics has occurred.

(2) Upon receipt of a report, the Hearing Examiner, without benefit of subpoenas or sworn testimony, shall make such preliminary investigation as he or she deems appropriate to determine whether probable cause exists to believe that a violation of the code of ethics has occurred. Once the preliminary investigation is complete, the person accused shall be given the name(s) of the accuser(s) and the allegations whether or not the Hearing Examiner finds probable cause. If the Hearing Examiner is satisfied that probable cause does exist, he or she may choose between two courses of action as follows:

(a) Refer the matter to the proper authorities for criminal prosecution; provided, that upon a determination that the proof beyond a reasonable doubt necessary for criminal conviction is not available, the proper authorities may refer the matter back to the Hearing Examiner for proceedings consistent with the civil burden of proof, e.g., a simple preponderance of the evidence, or

(b) Retain the matter for his or her own formal investigation with a view toward the ultimate disposition by the City Council or ~~City Manager~~ in the event it is determined an actual violation has occurred.

(3) If the Hearing Examiner should determine probable cause does not exist, he or she shall communicate his or her decision in writing to the person who made the initial report. The Hearing Examiner's determination of lack of probable cause shall remain confidential, unless the person who made the initial report chooses to make his or her complaint public. Should this latter event occur, all of the Hearing Examiner's records, files, notes, correspondence, and investigative materials relating to the finding of lack of probable cause shall be made open for public inspection.

(4) Should the Hearing Examiner decide to retain the matter for his or her own formal investigation pursuant to subsection (2)(b) above, the Hearing Examiner shall notify, in writing, the person who made the report and the person complained against, of his or her decision to pursue a formal investigation by way of holding a hearing to determine if a violation has occurred. The person complained against may choose whether the hearing shall be open or closed to the public.

(5) Hearings conducted by the Hearing Examiner shall be informal. The person complained against may be represented by legal counsel and may present and cross examine witnesses and give evidence before the Hearing Examiner. The Hearing Examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence needed. To that end, the proper authorities shall issue subpoenas and subpoenas duces tecum at the request of the Hearing Examiner or the person complained against. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence.

Upon motion made by the person complained against or upon his or her own motion, the Hearing Examiner may temporarily stay or permanently suspend his or her investigation when, in his or her formal discretion, the manifest needs of justice and fairness will be better served thereby.

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.

(6) Within 30 days after the conclusion of the hearing, the Hearing Examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her determination of a recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be forwarded by registered mail to the person who made the initial report and to the person complained against at addresses as given by both persons to the Hearing Examiner. An additional copy of the findings, conclusions, and recommendations shall be forwarded to the City Council for its formal action, if any.

~~(7) If the charge relates to a Councilmember or any member of a City Board or Commission,~~
Upon receipt of the Hearing Examiner's final action, the City Council shall schedule a public hearing. The person complained against shall have not less than two weeks' written notice of this hearing. At this hearing the Hearing Examiner, the person complained against, and other

interested parties shall be given a reasonable opportunity to be heard, following which the City Council may adopt, reject, amend, or modify the Hearing Examiner's findings, conclusions, and recommendations, or remand the matter for further investigation and consideration by the Hearing Examiner. The Council's decision shall be in writing, setting forth its findings, conclusions, and in appropriate cases, the civil sanction(s) imposed.

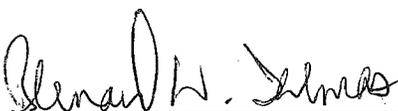
(8) Any person found, by final written order of the City Council, to be in violation of this code of ethics may appeal the Council's decision in the manner and form as provided by Chapter 2.30 WMC.

~~(9) If the charge relates to a City employee, the Hearing Examiner's report shall be referred to the City Manager.~~

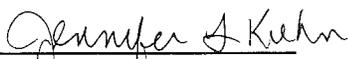
Section 6. Severability. Should any section, paragraph, sentence, clause, or phrase of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 7. Effective Date. The adoption of this Ordinance, which is a power specifically delegated to the City legislative body, is not subject to referendum. This Ordinance or a summary consisting of the ordinance by title only shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

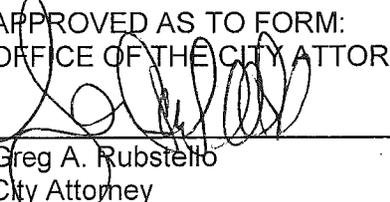
**ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF ITS PASSAGE
THIS 2nd DAY OF AUGUST 2011.**


Bernard Talmas, Mayor

ATTEST/AUTHENTICATED:


Jennifer L. Kuhn, CMC
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY


Greg A. Rubstello
City Attorney

PASSED BY THE CITY COUNCIL: 08-02-2011
PUBLISHED: 08-08-2011
EFFECTIVE DATE: 08-15-2011
ORDINANCE NO. 528