



**A Guide to Ethical Conduct\***  
**for Langley Officials & Employees**

**&**  
**for People Doing Business with Langley**

*Note: This draft Guide tracks the ideas in the Commission's draft Code.  
The Guide will change if/when changes are made in the Code.*

**\*Doing the right thing, right**

## Why an Ethics Code?

Langley is a special place, a small and congenial community on the beautiful Salish Sea, full of exceptional people who choose to live and do business here.

It's vital to the well being of the town and all its residents, businesses and visitors that Langley's operations be open and ethical, making it clear that Langley is as reputable as it is beautiful and that we can all count on fair, equal, honorable treatment by our officials and city employees.

Sunshine may be rare in our annual weather patterns, but in the operations of City Hall, sunshine must prevail always, with business conducted openly and in accordance with all existing laws and with Langley's ethics code.

## Your Responsibility

As an official or employee, you hold in your hands Langley's reputation, its economic well-being and our citizens' sense of living in a good place.

The people of Langley want to hear "Yes" from our officials and employees to some basic questions:

When we deal with our officials, staff and committee members, is every one of us treated fairly, honestly and exactly the same as others?

Can we be assured that our public resources\* are being used openly and only for the public's benefit?

Can we be confident that you'll put the town's well-being above your own and above that of your family members and friends?

Can we be assured that if you're really sure that something unethical is going on, you'll take the steps necessary to see that it's stopped?

Because perception is so important, it's vital that nothing you do even *looks* like playing favorites, misusing public property, disrespecting another person, hiding wrongdoing, or deliberately making a false accusation.

\* Money, equipment, supplies, vehicles, parks—anything paid for with tax dollars.

Nobody needs to tell you that it's not only unethical it's outright illegal to move Langley funds into your bank account or that of any other private person. Not even your favorite aunt, who really needs the money for a hip replacement. No, you can't even borrow the money temporarily. Sorry.

### **Representing Private Interests**

As an employee or elected official, you can't work on behalf of anyone else in dealing with City Hall. You can appear before the Council or a committee on behalf of yourself as a private-citizen but you can't represent another person or business.

If you're an elected official you can represent a constituent's interests as long as you're not paid a fee to do that. If you're an unpaid member of a Langley board or commission, you can represent another person or business—or yourself—before a board or commission if it's not the one you're serving on.

### **Speaking as a Langley Official or Employee or as a Private Citizen**

In public situations, it's important that people know if you're acting/speaking for Langley, or if you're being your private-citizen self. For example, if you're writing a letter to the editor of a paper, posting on Facebook or a website, or sending out a tweet; you need to do that as a private citizen. Don't identify yourself as a Langley official or employee unless you are indeed speaking/acting in your official capacity.

### **Angling for Future Employment**

For a year after you leave a City Hall job or elected office, you can't take a paid job with any person or business that you helped to get a contract with City Hall or with any person or business who benefited from any other decision you made.

This one-year break helps eliminate any perception of a "revolving door," causing people to suspect you took an action just to get yourself a new job, down the road.

This restriction doesn't apply if your City Hall job was simply carrying out routine administrative tasks that happened to involve the person or business now offering you a job.

### **Mishandling Information**

You can't take confidential information you've received as an official or employee and use it for your personal benefit or to benefit a relative or friend.

Information that your work gives you about individuals, upcoming RFPs (requests for proposals), any proceedings that are in process, and about fellow officials' and

If your withdrawal would mean there's no quorum and the Council or committee can't act, the matter can be tabled until a future meeting that does assemble a quorum. If it isn't possible to put together a quorum without you, you can vote, but your conflict of interest must be on record. It's also possible that when you present your conflict to the group, they'll decide it's insignificant and that there's no problem with your taking part in the discussion and voting.

### **Monitoring the Ethics Code**

Keeping Langley's operations fair and honest is everyone's responsibility. If you're sure that someone's doing things that violate the ethics code, tell your supervisor or, if the problem is the supervisor, go to the mayor. If the *mayor's* the problem, go to the mayor *pro tem*.

If the violation you've found is by a member of a board or commission, go to the chair of the group and to the Mayor.

If none of those options work, go to the Ethics Board. *[If there is one.]*

~~~~~

Thank you for your service to Langley.

Our hope is that the understanding and observance of the ethics code means that there simply are no ethics breaches, that potential wrong steps are clearly understood and never taken.

Yours for an ethically estimable Langley,  
The Members of the Ethics Commission

## **Chapter 1.24 Ethical**

### **Conduct**

#### **Sections:**

1.24.010 Purpose

1.24.020 Definitions

1.24.030 Prescribed Conduct

1.24.030.1 Conflict of Interest

1.24.030.2 Gifts

1.24.030.3 Use of Public Resources

1.24.030.4 Representation of Private Interests

1.24.030.5 Future Employment

1.24.030.6 Use of City Information

1.24.030.7 Nepotism

1.24.030.8 Harassment

1.24.040 Administrative Provisions

1.24.040.1 Ethics Board

1.24.040.2 Declaration and Management of Conflicts of Interest

1.24.040.3 Advisory Opinions

1.24.040.4 Waivers

1.24.040.5 Reporting of a Violation

1.24.040.6 Investigations

1.24.040.7 Sanctions and Remedies

**1.24.010 Purpose**

**Officials, Employees and Consultants** are entrusted with and responsible for the property, resources and reputation of the city. They are obligated to make decisions and implement policies free of coercive or other improper influence. They are required to use their position in the best interests of the city rather than for personal interests, whether their own interests or those of their family, friends, or business associates. They must not treat anyone preferentially, or in any way different than other city residents. It is central to keeping the public's trust in Langley's government that public servants seek to avoid even the appearance of impropriety. Fulfilling one's role as a public servant sometimes means sacrificing rather than gaining opportunities. It is important that everyone participating in decisions recognizes their obligation to the City of Langley's code of ethics as set forth in this chapter.

This code focuses on conflicts of interest, which can affect the decisions of Langley Elected **Officials, Employees and Consultants** in ways that are or appear to be unfair to the community, its residents and entities. It is important that **Officials, Employees and Consultants** can identify the conflicts of interest that may occur in the course of their public service and recognize that their obligation to comply with this code must take precedence over personal convenience or expediency. It is particularly important to earn and keep the trust of city residents by preventing conflicts from occurring, disclosing conflicts when they do arise, and withdrawing from any involvement in a matter where they have a conflict even if they feel certain they can act impartially.

The purposes of this code of ethics ~~section~~ are:

**Commented [M1]:** Edit suggested simply to employ consistent language throughout chapter.

- (a) to establish standards of ethical conduct - especially those dealing with conflicts between personal interests and those of the city - for Langley **Officials, Employees and Consultants** and those who do business with the city;
- (b) to provide clear guidance with respect to such standards by clarifying which acts are allowed and which are not;

(c) to promote public confidence in the integrity of Langley's governance and administration;

(d) to provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government; and

(e) to provide for the fair and effective administration and enforcement of this code.

This code is enacted pursuant to RCW ~~35A.11.020~~ ~~42.060~~ and is not intended to authorize any conduct prohibited by RCW 42.23 (Code of Ethics for Municipal officers – Contract Interests), RCW 42.52

**Commented [M2]:** RCW 42.23.060 relates to a conflict between the provisions of that section and a city charter. Langley is a code city, not a charter city (i.e., Langley has no charter), so RCW 35A applies.

(Ethics in Public Service), RCW 42.36 (Appearance of Fairness Doctrine) and RCW 42.41.050 (Local Government Employee Whistleblower Protection Act). In the event of conflict between this code and any applicable state or federal laws and regulations, the stricter interpretation is to be applied.

**1.24.020 Definitions**

**City Entity** means the Langley city council and any department, office, agency, advisory board, commission, district, administration, division, bureau, committee, or subcommittee of the city, regardless as to whether the entity in question is permanent or temporary, whether its members are employed, contracted or volunteer, how its members were elected ~~or~~ appointed, ~~or appointed~~ and whether or not they have formal voting rights.

Commented [M3]: Unclear how this applies?

**Confidential Information** means any information which the City of Langley is entitled by law and has ~~determined itself by policy or rule to keep confidential, subject to the provisions of the Public Records Act (RCW 42.56), the Open Public Meetings Act (RCW 42.30), or other applicable law.~~ ~~It includes information which the city may have designated as confidential with such time and if the city is required to disclose under any state or federal government law or rule.~~

**Consultant(s)** means an independent ~~professional~~ person, proprietorship, partnership, corporation or other similar entity retained by the City of Langley to perform an administrative function or to which a city function may have been outsourced, whether on a temporary or permanent basis. This includes any person advising a city official, and in a position to influence a city decision or action, or have access to Confidential Information.

Commented [M4]: Suggested deletion in order to avoid an argument that a "non-professional" Consultant would be exempt from this chapter.

**Customer or Client** means any person or entity that has been supplied goods or services during the previous twelve months by either the Official, Employee or Consultant or his or her Outside Employer or Business provided that his or her position in ~~the Outside Employer or Business~~ ~~this business~~ is such that he or she can reasonably be expected to have knowledge of or influence over the transaction.

**Domestic Partner** means an adult, who is not married to or in a civil union with an Official, Employee or Consultant but who lives with him or her and shares a common domestic life.

**Elected Official(s)** means any official who holds office as a consequence of an election and includes officials appointed to ~~fill~~ any vacancies ~~in elected offices~~ that may occur pending the next general election.



**Employee(s)** means any person employed by the city and subject to the personnel policies of the city, whether temporary or permanent and whether full time or part time.

**Family** means the spouse, child or step-child, brother or sister, parent or step-parent, niece or nephew, uncle or aunt, and grandparent or grandchild of an **Official, Employee or Consultant** or their spouse. Family includes a **Domestic Partner** and any person claimed as a dependent on their latest federal income tax return.

**Financial Benefit** means any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value.

**Financial Interest** is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result. Financial benefit does not include a campaign contribution to a candidate not exceeding 10% of the total of all campaign contributions to that candidate in any election cycle.

**Ministerial Acts** means an action performed in a prescribed manner without the exercise of substantial judgment or substantial discretion as to the propriety of the act. Non-exhaustive examples of ministerial acts include the issuance of a dog license by a city clerk, the reading of water meters, and the issuing of related invoices.

**Commented [M5]:** Suggested additions in order to avoid argument that any exercise of judgment or discretion, no matter how slight, would remove the act from this definition.

**Official(s)** means **Elected Officials** and any other official of the city other than an **Employee or Consultant**, whether paid or unpaid and whether temporary or permanent. It includes all the members of every **City Entity** including volunteers.

**Outside Employer or Business** means a corporation, partnership, sole proprietorship, or other employer other than the city, whether for profit or non-profit, public sector or private sector, to which an **Official, Employee or Consultant** is related in one or more of the following ways: (a) he or she receives compensation, whether actual or deferred, for services rendered or goods sold or produced, and

(b) he or she has an ownership interest, whether direct or indirect including options or contingent rights of any kind excluding, in the case of a public corporation, an ownership interest of less than one percent of the outstanding stock.

For the purposes of this definition, "compensation" does not include reimbursement for actual out-of-pocket expenses such as travel expenses.

**Personal Benefit** means benefits other than those that are directly financially advantageous. ~~These non-financial benefits include such things as reputation and the success of one's career.~~ A personal interest means a relationship to something such that a personal benefit has been, will be, or might be obtained by certain action or inaction with respect to it.

**Commented [M6]:** Suggested deletion is due to the arguably vague nature of this provision; additionally, it's likely that most if not all who perform services for Langley (or any organization) do so at least in part in order to advance their reputations and careers, and such motivation is frequently beneficial to the affected city or other organization. Caution should be exercised in including this as a disfavored or prohibited "Personal Benefit."

**Related Party** means, in relation to an Official, Employee or Consultant, the following persons:

- (a) a member of his or her Family;
- (b) any person with whom he or she has a regular and close personal relationship; (c) any person with whom he or she has a financial or business relationship, including but not limited to:
  - (i) an Outside Employer or Business of his or hers, or of his or her spouse or Domestic Partner;
  - (ii) an employee of his or her Outside Employer or Business;
  - (iii) a Customer or Client of his or her Outside Employer or Business; or
  - (iv) a debtor or creditor of himself or herself, or of his or her spouse or Domestic Partner
- (d) a person or entity from whom an Elected Official has received an election campaign contribution during the past election cycle, either directly or indirectly through a campaign committee of any kind, that in the aggregate exceeds 10% of the total of all contributions made to the candidate in the cycle. For the purpose of this clause, donations from a person or entity include donations from any related family member or business;
- (e) a nongovernmental civic group, union, social, charitable, or religious organization of which he or she or his or her spouse or Domestic Partner is an officer or director.

**Retaliatory Action** means:

- (a) any unwarranted adverse change in a City employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand, unwarranted unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action. For purposes of this subsection, "unwarranted" shall mean unjustified based upon an objectively reasonable standard taking into consideration the facts and circumstances of the situation; OR

**Commented [M7]:** Suggested addition is to ensure that performance evaluations of staff who file complaints are not effectively prohibited. As currently drafted, City would violate this section if an "unsatisfactory performance evaluation" occurred, even if it was fully justified. For example, consider the situation where an employee files a complaint, and then the complaining employee thereafter regularly arrives late for work. As drafted, the policy would prevent City from taking corrective action because it would constitute an "unsatisfactory performance evaluation".

(b) hostile actions by another employee towards an employee that are condoned or encouraged by a supervisor or senior manager or Official.

**1.24.030 Prescribed Conduct**

**1.24.030.1 Conflicts of interest**

Officials, Employees and Consultants shall avoid actual or apparent conflicts of interest. These arise when they use their official position or office, to take or fail to take any action, or influence others to take or fail to take any action, in a manner which they know, or have reason to believe, will result in a Personal or Financial Benefit to himself or herself or to a Related Party as distinct from general benefits that are shared with all or a substantial segment of the city's population. The performance of purely Ministerial Acts does not give rise to conflicts of interest. Specific instances of the conduct required in relation to common examples of conflicts of interest are set out in 1.24.030.2 through 1.24.030.8.

**1.24.030.2 Gifts**

1. An Official, Employee or Consultant and his or her spouse or Domestic Partner shall not, directly or indirectly, solicit or accept anything of value from any person or entity that has within the past twelve months sought, or is now ~~intending to seek~~ a Financial Benefit from a City Entity over which he or she is in a position to exert any influence. ~~Except as provided in subsection 4., below.~~ This includes, but is not limited to, cash, gifts sent to a home, paid outings, paid travel, tickets to concerts and sporting events, and any other forms of gifts, gratuities, honoraria or favors.

**Commented [M8]:** Suggested deletion due to difficulty in proving whether one "intended" to seek a Financial Benefit.

2. A person or entity that has within the last twelve months received or sought, or is now ~~intending to seek~~, a Financial Benefit from a City Entity, may not give or seek to give anything of value to any Official, Employee or Consultant in a position to exert any influence over that City Entity, or to his or her spouse or Domestic Partner.

**Commented [M9]:** Consider revising this last sentence to exclude family members, or perhaps immediate family members. If not, this could sweep within its reach, for example, Councilmember buying dinner or a plane ticket for his or her own spouse if the spouse works or reasonably could work under a contract with City (or has any other Financial Interest).

3. For the purposes of this provision, a mayor, city administrator, or council member is deemed to be in a position to exert influence over every City Entity.

4. This section is not intended to prohibit Officials, Employees or Consultants from exchanging minor gifts with their personal friends ~~or Family~~ in the course of ordinary social intercourse, provided that those persons do not have business before the city, or their business is with a City Entity where the Official, Employee or Consultant is not advising on or participating in the decision-making process, or has previously withdrawn from participation in the matter.

Commented [M10]: See, Comment M9.

5. This section is not intended to prevent any person from making gifts of property, money, or services to the city as a whole provided that such gifts are unconditional in nature and are ~~accepted by~~ ~~disclosed to~~ the City Council.

**1.24.030.3 Use of Public Resources**

1. An Official, Employee or Consultant shall not use or lend, or permit others to use or lend, any city funds, property, or staff for the Personal or Financial Benefit of himself or herself or of a Related Party. This includes, but is not limited to, city funds, office space, supplies, stationery, postage, telephones, equipment and vehicles. It also includes the use of travel and other expense reimbursements for anything other than official business.

2. Officials, Employees and Consultants may use any city resources that are generally available to the public provided this use is on the same terms and conditions as those applicable to the public.

3. Officials, Employees and Consultants may use city resources when, in the conduct of official business, they are used in a minor way for personal convenience, provided that this use is according to the city's written policies or has been authorized by the ~~Mayor or city council~~.

Commented [M11]: Under RCW 35A.12.100, the Mayor is responsible for the acts of City employees and consultants. City Council's authority is set forth in RCW 35A.11.010 and .020, and does not include employee supervision.

**1.24.030.4 Representation of Private Interests**

1. An Official, Employee or Consultant shall not represent any private interests in matters before the City or in matters before other entities but against the city's interests. An Official, Employee or Consultant shall only appear before a City Entity on his or her own behalf or on behalf of the City. If he or she appears before the meeting of any City Entity as a private citizen, and not in an official capacity, he or she must ~~comply with WMC follow the rules about the declaration and management of conflicts of interest in 1.24.040.2.~~ If he or she writes a letter to the editor or other publicly distributed writing, he or she is required ~~must to disclose that he or she whether he or she is acting in an official capacity or only as a private citizen, unless authorized by the Mayor to act on behalf of the City.~~ If the speech or writing is in response to criticism or other communication

directed at or regarding his or her official role, the **Official, Employee or Consultant** shall respond only in his or her official role.

2. An **Elected Official** may always represent his or her constituents in matters of public advocacy provided no element of additional compensation from the constituent is involved.

3. Unpaid volunteer members of a **City Entity** may represent persons and entities before, and appear before, any **City Entity** other than their own, subject to ~~compliance with LMC the rules about~~ ~~the designation and management of conflicts of interest in~~ 1.24.040.2.

#### 1.24.030.5 Future Employment

1. For a period of twelve months after leaving his or her city service or employment, an **Official, Employee or Consultant** shall not act as agent, attorney, lobbyist, or other sort of representative, on behalf of any other person, for compensation, to or before his or her former **City Entity**. For the purposes of this provision, a mayor, city administrator or council member is deemed to have worked for every **City Entity**. This includes action by a partner, associate, and other professional employee of an entity in which the former **Official, Employee or Consultant** is a partner, associate, or professional employee.

2. An **Official, Employee or Consultant** shall not accept compensated employment, full time or part time, for a period of twelve months after leaving his or her city service or employment, with any of the following:

- (a) a party to a contract with the city, when he or she participated personally and substantially in the preparation, negotiation, or award of the contract;
- (b) an individual or entity who has, within the previous year, benefited directly from any decision made by, or based on advice or information supplied by, the **Official, Employee or Consultant** or by a subordinate, other than information related to purely **Ministerial Acts**.

3. Former **Officials, Employees and Consultants** are not prohibited from ~~such compensated~~ employment in the following cases:

- (a) they are working for the city on a volunteer basis;
- (b) they are acting on behalf of another federal, state, or local government;
- (c) they are giving uncompensated testimony under oath;
- (d) they are providing scientific or technological information at the government's request;
- (e) they performed only Ministerial Acts; or
- (4)(e) (f) The City Council approves a waiver from the requirements of this section for good cause shown.

**Commented [M12]:** A one-year employment bar is a dramatic sanction. The Council may wish to expressly provide the option to waive this requirement for good cause.  
**Field Code Changed**

**1.24.030.6 Use of City Information**

An Official, Employee or Consultant shall not make use of information acquired through his or her official position for the Personal or Financial Benefit of himself or herself or of a Related Party. This includes the following:

- (a) the disclosure or use of Confidential Information; and
- (b) the refusal to disclose, or any obstruction of the disclosure of, information which the city is required to disclose pursuant to its own laws and rules or those of any state or federal government.

**1.24.030.7 Nepotism**

Officials, Employees or Consultants shall not, on behalf of the City, undertake any of the following activities in relation to any person who is a member of his or her Family:

- (a) hire or change the conditions of employment of the person; this includes attempting to influence such decisions;
- (b) act in a direct supervisory role over the employment of the person;
- (c) award or attempt to influence the award of a contract to the person; and

- (d) grant a ~~license~~ or permit or take any other discretionary administrative decision affecting the person; this includes making recommendations or exerting any other form of influence regarding the decisions of any City Entity.

**1.24.030.8 Harassment**

1. An Official, Employee or Consultant shall not use their position to harass, intimidate or discriminate against any co-worker or member of the public. This includes, but is not limited to, any actions taken on the basis of a person's sex, sexual preference, race, nationality, age, appearance, or religious beliefs.
2. It is a violation of this code for an Official or Employee to fail to investigate in a timely, objective and diligent manner any complaints of harassment that may have been reported to him or her, unless he or she has promptly and in writing referred such complaints to a more appropriate investigatory body.
3. No Official or Employee shall take any kind of Retaliatory Action against any person who makes a complaint of harassment.

**1.24.040 Administrative Provisions**

**1.24.040.1 Ethics Board**

1. An Ethics Board of not less than three or more than five three members, appointed by the Mayor and confirmed by the City Council, is hereby created. Each member shall serve for a three year term which shall be staggered so that at least one member is appointed each year. A simple majority of the members of the Board shall constitute a quorum.
2. All members of the board shall have their primary residence on Whidbey Island south of Classic Road and a majority shall be residents of the City of Langley. No member of the board shall be an Official, Employee or Consultant of the city in any other capacity. Board members shall not receive any remuneration from the City but may be entitled to reimbursement of out of pocket expenses on the same basis as volunteer members of other City Agencies.
3. The functions of the Board shall be to:

(a) provide an ethics orientation and training program for **Officials** related to this ethics code ~~and ethical decision making in general;~~

**Commented [M13]:** Suggested deletion because the term "ethical decision making in general" is broad enough to have different meanings to different people.

(b) to the extent requested by the Mayor provide such educational and training resources as may be necessary so that **Employees and Consultants** understand their responsibilities and required conduct under this ethics code;

(c) provide advisory opinions about the application of the code at the request of **Officials, Employees or Consultants;**

(d) ~~recommend issues to the City Council for final action, waivers for good cause shown from the~~ conflict of interest provisions of this code ~~at the request of~~ **Officials, Employees or Consultants;**

**Commented [M14]:** Suggested addition due to (a) "gray area" of the law regarding ability of the City Council to delegate to advisory body the authority to waive provisions of adopted City code, and (b) the related requirement to establish a standard against which to measure requests for waivers (i.e., "good cause shown").

(e) investigate complaints and recommend ~~to the Mayor or City Council as appropriate~~ ~~for final action~~ any sanctions and remedies that may be required; and

(f) maintain records of all advisory opinions, waiver ~~requests and decisions,~~ investigations and recommendations, and prepare an annual report to City Council on its activities including recommendations for any changes to this code.

**1.24.040.2 Declaration of and Management of Conflicts of Interest**

1. **Officials shall declare,** ~~at the first public meeting when the matter is being considered,~~ any actual or apparent personal or financial conflict of interest, pertaining to any ordinance, resolution, contract, proceeding or other action pending before a **City Entity** in which they participate ~~at the first public meeting when the matter is being considered.~~ The disclosure shall be recorded in the minutes of the meeting.

2. **Officials who have disclosed a conflict of interest that may result in a Personal or Financial Benefit for themselves or a Related Party shall, unless granted a waiver** ~~in the manner prescribed in this chapter, by the Ethics Board,~~ **withdraw from the meeting for the duration of the discussion of the issue that has given rise to the conflict of interest.**



3. Officials may be challenged and requested to withdraw from participation in a matter, for the reason that he or she has a conflict of interest, by:

- (a) another member of a City Entity,
- (b) a party to the current matter, or
- (c) anyone else who may be affected by a decision relating to the matter.

4. If, following a request, an Official decides not to withdraw, a decision as to whether or not to require withdrawal shall be taken by:

- (a) a vote of the unchallenged members of a City Entity where he or she is a member of, or scheduled to appear before, the entity;
- (b) a vote of the unchallenged members of the City Council where a council member is the person who is requested to withdraw;
- (c) a vote of the City Council where the mayor is the person who is requested to withdraw;  
or
- (d) a decision of the mayor in all other cases.

5. If withdrawal as a result of a declaration of a conflict of interest or of a challenge and request for withdrawal results in the lack of a quorum or the failure to obtain a majority vote in a decision making body of the city, ~~[[the City Entity shall, if possible, delay a decision until a quorum is present, without the presence of the member having the conflict of interest. If that is not possible, the member(s) may participate in the proceeding and vote, as long as the apparent or actual conflict of interest has been disclosed.]]~~

6. Employees and Consultants, who are in positions requiring judgment and discretionary decision-making and who experience a conflict of interest in a matter before them shall report that conflict of interest to their supervisor immediately, in writing, and shall not take any action on the matter. The supervisor shall make arrangements for another employee or consultant to address the matter at hand. The Employee or Consultant with the conflict of interest shall not provide

**Commented [M15]:** Consider using instead the "rule of necessity," codified at RCW 42.36.060 for quasi-judicial proceedings and the "appearance of fairness doctrine" which reads, "In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine."

information, hold conversations, participate in meetings or portions of meetings about the matter or in any way participate in its resolution.

7. An Official, Employee or Consultant who has withdrawn or has been required to withdraw from a matter shall not be replaced by a Related Party or by any other Official, Employee or Consultant over whom he or she is in a position to exercise any supervisory authority.

#### 1.24.040.3 Advisory Opinions

If an Official, Employee or Consultant has any doubt as to whether or not a proposed course of action violates this ethics code, he or she may apply to the Ethics Board for an advisory opinion on the matter. Advisory opinions, which must be in writing, may be relied upon by the Official, Employee or Consultant. ~~The whenever subsequent actions of any such Official, Employee or Consultant, provided they comply with the advisory opinion, shall not be grounds to sustain for any complaint that the ethics code has been violated. The advisory opinion shall constitute a complete defense to any such complaint received.~~

#### 1.24.040.4 Waivers

If the strict application of this code may result in undue delay in the ability of a City Entity to reach a decision, significant and unreasonable expense or other disproportionate public inconvenience, an Official, Employee or Consultant may apply ~~in the manner prescribed in this chapter to the Ethics Board~~ for a waiver so that ~~he or she~~ they can continue to participate in a decision despite the presence of a declared conflict of interest. ~~Approved w~~Waivers must be in writing. Actions taken by an Official, Employee or Consultant pursuant to the terms of a waiver shall not be grounds ~~to sustain for any~~ subsequent complaint that the ethics code has been violated. ~~The advisory opinion shall constitute a complete defense to any such complaint received.~~

#### 1.24.040.5 Reporting of a Violation

1. If an Employee believes that anyone has violated this code, he or she shall report the improper action to his or her supervisor. If the improper action involves the supervisor, the employee shall report the matter to the Mayor, or if it involves the Mayor, to the Mayor Pro Tem who will act on behalf of the City Council.

2. If a **Consultant** believes that anyone has violated this code, he or she shall report the improper action to the Mayor or, if it involves the Mayor, to the Mayor Pro Tem.
2. If an **Official** believes that anyone has violated this code, he or she shall report the improper action to the **City Entity** on which the **Official** sits, or before which he or she may appear, and to the Mayor or, if it involves the Mayor, to the Mayor Pro Tem.
3. If an **Official, Employee or Consultant** believes that a reported violation has not been addressed in good faith or that the person or persons responsible for the investigation have a conflict of interest, they may file a complaint with the **Ethics Board**.
4. The public may file a written complaint with the **Ethics Board** if they have good reason to believe that anyone has violated this Code. Any such written complaint shall describe the claimed violation with sufficient specificity to permit the Ethics Board to make a reasoned decision whether to proceed with any further investigation. The Ethics Board shall retain the authority but not the obligation to proceed with an investigation, and may dismiss a complaint without further action or investigation.
5. It is the responsibility of the person reporting a suspected violation to make a reasonable attempt to ascertain the correctness of the information furnished.
6. No **Official, Employee or Consultant** shall take any kind of **Retaliatory Action** against any person who reports or investigates any suspected violation of this code.

#### **1.24.040.6 Investigations**

1. Upon receipt of an allegation that an ethical violation has occurred, the Ethics Board shall, within 15 days, conduct a preliminary review to determine whether there is an *a priori* case to answer. If the Ethics Board concludes that the alleged facts are insufficient to support the claim of an ethical violation, it shall summarily dismiss the allegation.
2. If the allegation is not dismissed, the Ethics Board shall, within the following 45 days, conduct a substantive investigation of the matter to ~~consider~~determine the validity of the allegations, identify the consequences of the violation, and issue a written

~~recommendation to the Mayor and City Council, including recommended the sanctions~~  
or remedies to be imposed.

**Commented [M16]:** See, Comment M17 below.

3. If, during its investigation, the Ethics Board concludes that the alleged violation may involve a breach of law it may ~~recommend to the Mayor and City Council that the matter be referred to the~~  
~~Mayor~~ for further investigation to one or more of the following:

**Commented [M17]:** Suggested addition because Ethics Board, as an advisory body, has limited regulatory authority. Any decision to make referrals to outside agencies should come from the Mayor or City Council as the entities with full regulatory authority.

- (a) to the City Attorney in cases where ~~the Ethics Board concludes that it needs formal~~  
legal advice ~~is necessary or helpful~~ before continuing its investigation;
- (b) to the Island County District Attorney in cases where ~~the Ethics Board concludes that~~  
a criminal activity may have been associated with the violation; and
- (c) to the State Auditor in cases where ~~the Ethics Board concludes that~~ the city may  
have incurred a financial loss associated with the violation.

4. ~~In order to conform to the above timetable,~~ ~~The Ethics Board shall have adopt written rules~~  
~~of procedure based discretion in establishing the procedure to be followed in each investigation~~  
~~which written rules shall address at a minimum subject to the following:~~

**Commented [M18]:** Suggested addition due to concerns about Due Process and Equal Protection if the Board can utilize materially different procedures for different cases.

- (a) prior to reaching any decision, the proceedings of the Ethics Board shall be  
confidential to the greatest extent permitted by ~~state law, and~~ this confidentiality  
requirement shall be binding ~~to the extent permitted by law~~ on all parties involved in the  
investigation;
- (b) all parties shall be entitled to substantially equal time to ~~present evidence, and to~~  
~~hear, question, and answer any and all allegations made by other participants in or to the~~  
~~investigation. A party or other participant may request that the Ethics Board make inquiry of~~  
~~or pose questions to other participants about specific factual issues. No person or no party may~~  
engage in any *ex parte* communication with any member of the Ethics Board;
- (c) any party may, but is not obliged to, be represented or assisted by an attorney or  
other advisor of their choice, ~~but cross-examination of participants shall not be permitted.~~

**Commented [M19]:** Suggested addition here and in (c) is designed to address problems that often arise with cross-examination and other issues related to witness testimony in the absence of trained attorneys and judges. The suggested process works well, avoids discomfort or intimidation of unrepresented parties, and permits the Board to re-frame questions suggested by participants to better address the actual concerns of the Board while also greatly minimizing the potential for conflict that can otherwise arise between opposing sides in an investigation.

(d) ~~all recommendations to the Mayor and City Council decisions~~ of the Ethics Board shall be given in writing and shall be ~~made~~ public records. ~~All recommendations shall include:~~ ~~this shall involve a non-confidential summary of the facts of the case and along with the Ethics Board's analysis and rationale detailed reasoning in support of its~~ ~~for any~~ conclusions reached and any ~~recommendations~~ remedies or sanctions recommended.

#### 1.24.040.7 Sanctions and Remedies

1. If, after investigation, the Ethics Board concludes that a violation of this code has taken place by an Elected Official, then ~~its written decision may include a recommendation that the Mayor or City Council issue a formal letter of censure, and may present its decision to the Mayor and City Council at an open public meeting~~ an account of the matter and its findings to be published to the citizens of Langley.

2. If, after investigation, the Ethics Board concludes that a violation of this code has taken place by any other party, then it may recommend to the Mayor, or to the Mayor Pro Tem if the Mayor is involved in the violation ~~and to the extent permitted by law~~, that he or she takes one or more of the following actions:

- (a) issue a letter of reprimand to the violator if the violation is minor or technical in nature;
- (b) in the case on an ongoing violation, order the violator to cease and desist and order the matter giving rise to the violation be reconsidered *de novo* by other non-conflicted decisionmakers or through an alternative process;
- (c) institute disciplinary proceedings against an Employee who has violated this code in accordance with the prevailing personnel policies and practices of the City;
- (d) terminate the City's contract with a Consultant who has violated this code;
- (e) dismiss any member of a City Entity who has violated the code from that entity and any other City Entity of which he or she may be a member;

**Commented [M20]:** Suggested addition because Mayor Pro Tem would not have legal authority, for example, to discipline or dismiss an employee even if recommended by Ethics Board (that is, Mayor Pro Tem does not assume elected Mayor's executive power and authority described in RCW 35A.12.100).

(g) to the extent permitted by law or contract, declare null and void and cancel or revoke the award of any contract or the issuance of any permit, license, or other privilege associated with a violation of this code; and

**Commented [M21]:** City has only limited legal authority to declare executed contracts void for violations of this ordinance. A recommendation for future City contracts, though, would be to insert a new clause into all future contracts requiring compliance with this ordinance, and providing for automatic termination of such contracts for violation.

(g) prohibit a party that has violated this code from conducting specified transactions with the city for a period of twelve months.

8<sup>th</sup> August 2013