

CITY OF ORTING
WASHINGTON
RESOLUTION NO. 2017-27

ORIGINAL

A RESOLUTION OF THE CITY OF ORTING,
WASHINGTON, ADOPTING POLICY NO. 2017-04,
ESTABLISHING CODE OF ETHICS FOR CITY COUNCIL;
SETTING EFFECTIVE DATE.

WHEREAS, the City Council of the City of Orting maintains Rules of Procedure, which govern conduct of City Council members, generally, and were last updated on November 9, 2016; and

WHEREAS, the City Council desires to adopt a comprehensive Code of Ethics, which would govern the ethical conduct of elected officials and penalties for violations thereof, and supplement the Rules of Procedure, as amended and as may be amended in the future; and

NOW, THEREFORE, the City Council of the City of Orting, Washington, do resolve as follows:

Section 1. Ethics Policy, Adopted. Policy No. 2017-04, the "Council Ethics Policy" attached hereto as Exhibit A, is hereby adopted by reference as if fully set forth herein.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Resolution or its application to other persons or circumstances.

Section 3. Effective Date. This Resolution shall take effect and be in full force immediately upon its passage.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE 13th DAY OF December, 2017.

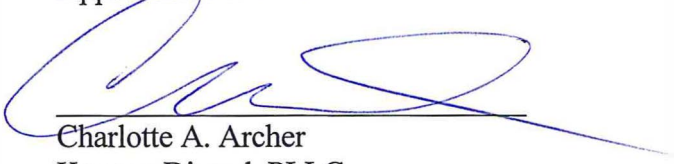
CITY OF ORTING


Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Jane A. Montgomery
Jane Montgomery, City Clerk

Approved as to form:



Charlotte A. Archer
Kenyon Disend, PLLC
City Attorney



City Council of the City of Orting, Washington

Policy No. 2017-04

City Council Code of Ethics

I. PURPOSE

The purpose of this policy is to establish a formal code of ethics by which Councilmembers will conduct themselves while serving on the Orting City Council.

II. REFERENCES

Chapter 42.23 RCW, Code of Ethics for Municipal Officers—Contract Interests

Ch. 42.20 RCW, Misconduct of Public Officers

Ch. 42.36 RCW, Appearance of Fairness.

III. DECLARATION OF POLICY

It is essential to the proper administration and operation of the City of Orting that the City Council be and give the appearance of being independent and impartial; that elective and appointed office with the City of Orting not be used for personal benefit; and that the public have confidence in the integrity of the City. In recognition of these goals, the City Council has adopted this Code of Ethics, which is applicable to all members of the City Council.

The purpose of this Code is to establish standards of ethical conduct applicable to the City Councilmembers, in the discharge of their duties by prescribing essential restrictions against conflict of interest and other conduct not consistent with good ethical practices while not creating unnecessary barriers to public service. To that end, Councilmembers should not be denied the opportunity available to all other citizens to acquire and maintain private economic interests, except in circumstances in which a conflict of interest would reasonably result.

It is required that all Councilmembers comply with the law and all other applicable rules and regulations governing the conduct of public officials. The standards in this Code shall not preclude other standards required by law including but not limited to, Ch. 42.23 RCW, Code of Ethics for Municipal Officers-Contract Interests, Ch. 42.20 RCW, Misconduct of Public Officers

and Ch. 42.36 RCW, Appearance of Fairness. Nothing in this Code of Ethics shall be construed to limit full compliance with applicable federal and state laws and applicable rules and regulations governing the conduct of public officials now existing or hereinafter enacted.

A. Avoidance of the Appearance of Impropriety

All members of the City Council should conduct their official duties with integrity and impartiality and in a manner that avoids even the appearance of impropriety or a conflict of interest between public duties and private interests. No Councilmember shall, by their conduct or participation in activities, give reasonable basis for the impression that any person can improperly influence the Councilmember or unduly enjoy the Councilmember's favor in the performance of official City actions, or that the Councilmember is affected in the performance of the official act or actions by the kinship, rank, or association with any person.

Example:

A Councilmember actively pursues the award of a city contract to a company owned by a close friend. Such activity gives the appearance of impropriety and should be avoided.

B. Standards of Ethical Conduct

1. Personal Interests in Contracts Prohibited

No Councilmember shall participate in their capacity as a Councilmember in the making of a contract in which the Councilmember has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the Councilmember has only a remote interest in the contract as defined in RCW 42.23.040 and summarized below and where the fact and the extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership without counting the vote or votes of the Councilmember(s) having the remote interest

For purposes of this section, a "remote interest" means:

- a. that of a non-salaried officer of a non-profit corporation; or
- b. that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or
- c. that of a landlord or tenant of a contracting party; or
- d. that of a holder of less than one percent of the shares of a corporation, limited liability company or other entity which is a contracting party.

2. Personal Influence in Contract Selection Prohibited.

No Councilmember shall influence the City's selection of, or its conduct of business with, a corporation, person, or firm having or proposing to do business with the City if the Councilmember has a personal financial interest, direct or indirect in or with the corporation, person, or firm, unless such interest is a remote interest as defined in RCW 42.23.040 and summarized herein and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the Councilmember(s) having the remote interest.

Example:

A Councilmember is requested to vote to award a contract to a company that employs the Councilmember. If the Councilmember has a beneficial interest in the contract either direct or indirect such as through a business profit sharing plan, the contract cannot be approved. If the Councilmember has no such interest and/or is subject to the remote interest rule, the Councilmember must disclose his/her interest and abstain from voting. Further, the Councilmember may not attempt to influence the votes of other Councilmembers. Questions regarding these kinds of situations should be directed to the City Attorney for review.

3. Disclosure of Confidential Information

A Councilmember shall not disclose or use any confidential, privileged, or proprietary information gained by reason of his or her position for a purpose other than an authorized City undertaking; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request. Information obtained during Executive Sessions is deemed confidential.

Examples:

A Councilmember purchases land with advanced, undisclosed knowledge of the route of a new transit line that, when completed, will substantially increase the value of the land. The Councilmember's purchase of the land based on "inside" information violates this section off the Code of Ethics.

While having a conversation with Union leadership, a Councilmember discloses information discussed during Executive Session about labor negotiation strategy. The Councilmember's conduct violates this section's prohibition against disclosing information discussed in Executive Session.

4. Acceptance of Compensation, Gifts, Favors, Rewards, or Gratuity Prohibited.

Councilmembers may not, directly or indirectly, give or receive, or agree to give or receive, any compensation, gift, favor, reward, or gratuity for a matter connected with or related to the officer's performance of official duties for the city. Prohibited conduct includes, but is not limited to, the following:

- a. Accepting cash or other cash equivalents such as gift cards or gift certificates regardless of value except as part of an internal, recognized, and sanctioned city incentive program.
- b. Accepting gifts, gratuities, loans, entertainment or other items of value from anyone with whom the city regularly transacts business, who has or seeks a contract with the city, or who desires other official action from the city.
- c. Giving, offering or promising anything of value to a customer, a potential customer, or a financial institution in connection with any transaction or business that the city may have with that customer, potential customer, or financial institution.
- d. Misusing confidential city information or disclosing such information to any individual who does not have a need to know the information.
- e. Using the city's name, account or credit to purchase merchandise for personal use

Exceptions. The prohibition regarding accepting compensation, gifts, or rewards shall not apply to:

- a. Receiving items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made to gain or maintain influence;
- b. Receiving items exchanged equally among Councilmembers at a social event hosted or sponsored by an officer of the city for other officers or employees of the city.
- c. Receiving items of nominal value provided for advertising purposes such as pens, calendars, or items received at a conference;
- d. Payment by a governmental or non-governmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. Reasonable expenses are limited to travel, lodging and

subsistence expenses incurred the day before through the day after the event;

- e. Payment of fees and reasonable travel expenses for attending seminars or educational programs sponsored by a government or bona fide non-profit professional, educational, trade or charitable association or institution. Reasonable expenses are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
- f. Discounts available to the individual as a member of a group, occupation or similar broad-based group;
- g. Awards, prizes, scholarships or other items provided in recognition of academic, sport, or scientific achievement;
- h. Attendance of the Councilmember at a hosted meal where official attendance by the Councilmember as a city representative is appropriate;
- i. Campaign contributions that are in compliance with Chapter 42.17 RCW.

Example:

The Anyname Company has submitted a bid on a City project. The President of Anyname approaches a City Councilmember and promises that if his firm is the successful contract bidder, he will buy supplies from a firm owned by the Councilmember. The Councilmember promises to use his/her position to secure the contract for Anyname. Such actions are a violation of this section of the Ethics Code.

5. Certain Employment Prohibited.

No City Councilmember shall engage in or accept employment or render services for any employer when such employment or service creates a conflict of interest with a duty owed to the city or conflicts with the proper discharge of official city duties.

Example:

A Councilmember, who is also a real estate agent, represents a client who is in competition with the City for a parcel of land. The Councilmember is in violation of this section of the Code of Ethics.

6. Personal Interest in Legislation Prohibited.

No City Councilmember shall benefit either directly or indirectly from any legislation or have a financial interest in any legislation coming before the City Council nor participate in discussion with or give an opinion on such legislation, unless such interest is a remote interest as defined in this section and where the fact and extent of such interest is disclosed and noted on the record of the Council, or similar records of the City prior to consideration of the legislation by the City Council. City Councilmembers' participation in the enactment of legislation shall be governed by Ch. 42.23 RCW, Code of Ethics for Municipal Officers and Ch. 42.36 RCW, The Appearance of Fairness Doctrine. City Councilmembers shall not be prohibited from participating in the adoption of legislation when the Councilmember has only a remote interest in the legislation as defined in this section, which has been disclosed, and the legislation is applicable to the general public and not of specific or unique benefit to the Councilmember. Questions regarding these kinds of situations should be directed to the City Attorney for review.

7. Improper Use of Position Prohibited.

A Councilmember shall not knowingly use his or her office or position to secure personal benefit, gain or profit, or use his or her position to secure special privileges or exceptions for himself or herself, or for the benefit, gain, or profits of any other persons.

8. Improper Use of City Personnel Prohibited.

A Councilmember shall not employ or use any person under his or her official control or direction for personal benefit, gain, or profit.

9. Improper Use of City Property Prohibited.

A City Councilmember shall not use city-owned vehicles, equipment, materials, money, or property for personal or private convenience or profit. Such use is restricted to those city services that are available to the public generally, for the authorized conduct of official business or for such purposes and under such conditions as are approved by the city council, city Administrator or designee.

A Councilmember shall not utilize the City's name, letterhead or logo for the purpose of endorsing any political candidate, business, commercial product, or service.

C. Impermissible Conduct After Leaving City Office

1. Disclosure of Privileged, Confidential, or Proprietary Information Prohibited.

No former City Councilmember shall disclose or use for his or her personal gain or that of any other person any privileged, confidential, or proprietary information gained because of his or her city office .

2. Participation in City Matters Prohibited.

No former City Councilmember shall, during the period of one year after leaving office:

- a. Assist any person in matters involving the city if, while in the course of duty with the city, the former Councilmember was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter; or
- b. Represent any person as an advocate in any matter in which the former Councilmember was involved while a Councilmember; or
- c. Participate as or with a bidder, vendor, or consultant in any competitive selection process for a city contract in which he or she assisted the city in determining the project, or work to be done or the process to be used.

D. Violation of the Code of Ethics

Any person who has information that a Councilmember may have violated the Code of Ethics shall provide that information in writing to the City Council and the City Administrator. The written complaint must be based substantially upon the personal knowledge of the complainant and signed by the person filing the complaint. No action will be taken on any complaint which is filed later than three (3) years after a violation of the Code of Ethics is alleged to have occurred.

Upon receipt of the complaint, the City Council, and/or the City Administrator shall provide it to the City Attorney who shall promptly review the information and determine whether the complaint, on its face, alleges facts that, if true, would substantiate a violation of the Code of Ethics and shall report back to the Council in writing. The City Council, at its next regular meeting, shall review the City Attorney's report and make a determination as to whether or not the Council shall refer the allegation(s) to a Hearings Examiner designated by the Council to conduct an investigation.

If so referred, the Hearings Examiner shall conduct an investigation of the complaint and prepare written findings and conclusions within sixty 60 days of the date the complaint was received by the City unless an extension is granted by the Council. The Councilmember accused of the ethics violation shall have the right to review any and all information obtained as a result of the investigation and shall have the right to respond in writing to the complaint which information shall be reviewed and taken into consideration by the Hearings Examiner.

Upon completion of the investigation, the Hearings Examiner shall issue an advisory report to the Council for its consideration, as well as to the City Administrator and City Attorney. The report shall set forth findings and conclusions demonstrating whether or not, based on a preponderance of the evidence, the councilmember has violated the Code of Ethics.

Within five (5) business days of the receipt of the report, the City Administrator shall provide copies of the report via certified mail to the complaining party and to the Councilmember against whom the complaint was filed at their last known addresses.

Within fifteen (15) business days of the receipt of the report, the Council (excluding the accused Councilmember) shall convene to review the alleged violation and the report and take action. Action may include the following:

1. Dismissal of the complaint on the basis that no violation of the Code of Ethics has occurred; or
2. Remand to the Hearings Examiner to obtain additional information in order for the Council to decide whether a violation has occurred; or
3. A determination that by a preponderance of the evidence, a violation of the Code of Ethics has occurred in which case the Council shall adopt written findings, conclusions and appropriate sanctions as forth herein.

Adoption of the findings, conclusions and sanction(s) by the City Council shall be by majority vote; provided that the Councilmember accused of the violation shall not vote on any matter involving that member; and provided further that in the event the Mayor is accused of the violation, the Deputy Mayor shall act in the Mayor's stead.

Within five (5) business days thereafter, the City Administrator shall provide copies of the Council's findings, conclusions and sanction(s) via certified mail to the complaining party and to the Councilmember against whom the complaint was filed at their last known addresses. No final disposition of the matter will be implemented for a period of ten (10) days to allow the Councilmember against whom the complaint was filed to request a review of the Council's decision. Such a request shall be submitted to the City Administrator in writing and shall state the reasons for his or her objections and request a review of the action taken. The Council shall review the action taken in light of the findings and conclusions and request for review and may take whatever further action, if any, appears appropriate under the circumstances. The action of the Council shall be final and not subject to further review or appeal except as may otherwise be provided by law.

Action by Council may take any of the following sanctions:

1. Admonition. An admonition shall be verbal non-public statement made by the Mayor to the member.
2. Reprimand. A reprimand shall be administered to the Councilmember by letter. The letter shall be prepared by the City Council and shall be signed by the Mayor.
3. Censure. A censure shall be a written statement administered personally to the member. The individual shall appear at a time and place directed by the City Council to receive the censure. It shall be given publicly, and the member shall not make any statement in support of or in opposition thereto or in mitigation thereof. A censure shall be deemed administered at the time it is scheduled whether or not the member appears as required.

4. Other sanctions. Any sanction imposed under this Code of Ethics is in addition to and not in lieu of any other penalty, sanction or remedy which may be imposed or sought according to law or equity, including, but not limited to:
 - a. Civil penalties of \$500 and possible forfeiture of office, pursuant to RCW 42.23.050.
 - b. Removal or recall from office pursuant to state law.
 - c. Removal from leadership positions, boards and commissions and other official positions or duties that do not conflict with Washington statutes.
 - d. Initiation of appropriate civil actions against any person who violates this Code.
 - e. Injunctive relief to ensure that violation of this Code or of other provisions of law cease and desist.