

REGULAR MEETING NOTICE/AGENDA OF THE SPOKANE CITY COUNCIL

**MEETING OF THURSDAY, MAY 23, 2024,
11:00 A.M. – CITY COUNCIL CHAMBERS**

A regular meeting of the Spokane City Council will be held at **11:00 A.M. on Thursday, May 23, 2024**, in City Council Chambers - City Hall 808 W. Spokane Falls Blvd. The meeting can also be accessed live on CityCable5 and streamed online at <https://my.spokanecity.org/citycable5/live/> and <https://www.facebook.com/spokanecitycouncil> or by calling 408-418-9388 and by using access code 2491 436 7432.

The meeting will be conducted in a study session format and will be open to the public both virtually and in person. No legislative action will be taken. No public testimony will be taken, and discussion will be limited to appropriate officials and staff.

Executive Session

At any time during or after the regular Study Session Agenda, the City Council may choose to adjourn into Executive Session for the purpose of discussing privileged legal matters. This portion of the meeting would be closed to the public pursuant to RCW 42.30.110.

Agenda:

Proposed Ethics Code Amendments - Mike Piccolo

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or mLOWmaster@spokanecity.org. Persons who are deaf or hard of hearing may contact Risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

Committee Agenda Sheet

Finance & Administration Committee

Committee Date	May 23, 2024
Submitting Department	City Attorney' Office
Contact Name	Mike Piccolo
Contact Email & Phone	mpiccolo@spokanecity.org; (509) 625-6225
Council Sponsor(s)	Betsy Wilkerson
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: 15 minutes
Agenda Item Name	Code of Ethics Revision; Renumbering of Whistleblower Protections
Proposed Council Action	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
Summary (Background)	<p>This ordinance revises the complaint process in Chapter 01.04A (Code of Ethics) as follows:</p> <ul style="list-style-type: none"> • Organizes the Ethics Code into five parts and reorganizes several sections. • Clarifies the "Jurisdiction of the Ethics Commission." • Expands procedures for processing Ethics Complaints: <ul style="list-style-type: none"> ○ Adds a preliminary review by the City Attorney to filter out complaints that do not meet the threshold for an ethics violation. ○ Adds formal investigation by an independent investigator before a complaint proceeds to the Commission for a hearing. • Puts the Appeal Process under the City's Hearing Examiner. • Moves Whistleblower Protections to a new Chapter 01.04B SMC.
<p>Fiscal Impact</p> <p>Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Total Cost: Click or tap here to enter text.</p> <p>Current year cost:</p> <p style="text-align: center;">Currently there is no cost to the City related to the complaint process except as incurred by individuals who hire counsel to represent them.</p> <p>Subsequent year(s) cost:</p> <p style="text-align: center;">It is anticipated that the City may incur costs to hire an independent investigator to interview a complainant who alleges a violation for which the Commission has jurisdiction.</p> <p>Narrative: Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue</p> <p>Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? Click or tap here to enter text.</p> <p>Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
Operations Impacts (If N/A, please give a brief description as to why)	

- What impacts would the proposal have on historically excluded communities?

By ensuring that an independent investigator is assigned to compile evidence and conduct interviews, the proposed revision would potentially give historically excluded communities more of an opportunity to have their complaints heard in a process that can be cumbersome and for which cooperation can be difficult to obtain.

- How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

The City may compile data from complainants who file Ethics complaints with the City Clerk's Office concerning their racial, ethnic, gender identity, national origin, or other identity data. Surveys may also be appropriate in collecting data concerning the effect of this change.

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

Survey data will allow complainants and the subjects of complaints to provide feedback concerning their ability to advance (or defend against) complaints in a more efficient manner.

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

Council Subcommittee Review

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

ORDINANCE NO. C - _____

An ordinance relating to the City's Code of Ethics; adopting a new Chapter 01.04B of the Spokane Municipal Code and repealing Chapter 01.04A of the Spokane Municipal Code.

WHEREAS, the City's Code of Ethics serves as the framework for establishing the rules of ethical conduct while setting forth a process to ensure that elected officials, City officers and employees are compliant with these rules, and that complaints about unethical conduct are appropriately addressed; and

WHEREAS, the City Council first adopted a Code of Ethics and created an Ethics Committee when it formally enacted a new chapter 1.04 to title 1 of the Spokane Municipal Code in 2006 under ORD C33785, creating a process for complaints against elected or appointed officials to be sent to the Ethics Committee for investigation and resolution; and

WHEREAS, revisions to the Code of Ethics were made under ORD C33911 in 2006 and ORD C35148 in 2014; and

WHEREAS, the City Council finds that additional changes are necessary to ensure that all complaints alleging violations of the City's Code of Ethics are investigated thoroughly and professionally, and that all relevant evidence is compiled prior to the matter being brought before the Ethics Commission for a hearing;

NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That there is adopted a new Chapter 01.04B of the Spokane Municipal Code to read as follows:

Chapter 01.04B Code of Ethics

PART 1 - GENERAL PROVISIONS

- Section 01.04B.010 Purpose
- Section 01.04B.020 Definitions
- Section 01.04B.030 Applicability
- Section 01.04B.040 Limitation Period
- Section 01.04B.050 Ethics Violations – Prohibited Conduct

PART 2 – ETHICS COMMISSION

- Section 01.04B.060 Jurisdiction of the Ethics Commission
- Section 01.04B.070 Duties and Powers
- Section 01.04B.080 Composition of the Ethics Commission
- Section 01.04B.090 Restrictions on Ethics Commission Members
- Section 01.04B.100 Proper Conduct and Avoiding Impropriety

- Section 01.04B.110 Training
- Section 01.04B.120 Vacancy and Removal
- Section 01.04B.130 Advisory Opinion

PART 3 – ETHICS COMPLAINTS

- Section 01.04B.140 Initiating an Ethics Complaint
- Section 01.04B.150 Preliminary Review of Complaint
- Section 01.04B.160 Investigation of Complaint
- Section 01.04B.170 Post-Investigation Procedures

PART 4 – HEARING AND ADJUDICATION

- Section 01.04B.180 Commencement of Proceedings
- Section 01.04B.190 Hearing Procedures
- Section 01.04B.200 Dismissal of a Complaint
- Section 01.04B.210 Penalties
- Section 01.04B.220 Recall of Elected Official for Violation of Code of Ethics

PART 5 – APPEAL

- Section 01.04B.230 Notice of Appeal
- Section 01.04B.240 Record of Proceedings and Exhibits Transmitted to Hearing Examiner
- Section 01.04B.250 Procedures for Review on Appeal
- Section 01.04B.260 Ruling by Hearing Examiner

PART 1 - GENERAL PROVISIONS

Section 01.04B.010 Purpose

- A. It is the policy of the City of Spokane to demand the highest standard of ethical conduct from all of its employees and City officers, whether elected, appointed or hired. All are required to demonstrate honesty, integrity, responsibility and fairness in carrying out their public duties and may never use public resources or their position for personal gain. The Ethics Commission functions to ensure that this policy, as codified in this Chapter, is enforced and that the standards set forth herein are reinforced through training and other initiatives.
- B. It is the intent of the City Council that this chapter be reasonably construed to accomplish its purpose of protecting the public against decisions or conduct that are affected by undue influence, conflicts of interest or any other violation of this Code of Ethics. This Code of Ethics is supplemental to state law, including, but not limited to, chapter 42.20 RCW – Misconduct of Public Officers, chapter 42.23 RCW – Code of Ethics for Municipal Officers – Contract Interests, and chapter 42.36 RCW – Appearance of Fairness Doctrine.

Section 01.04B.020 Definitions

The following words and phrases as used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings:

- A. "Agency" means any City board, commission, bureau, committee, department, institution, division or tribunal in City government.
- B. "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to or otherwise provide assistance to another person, believing that the action is of help, aid, advice or assistance of the person with intent so to assist such person.
- C. "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.
- D. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust or any legal entity organized for profit.
- E. "City" means the City of Spokane, Washington.
- F. "City action" means any action on the part of an agency, including, but not limited to:
 - 1. a decision, determination, finding, ruling or order; and
 - 2. a grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling or order.
- G. "City officer" means every individual elected, appointed, hired or otherwise selected to an office or position with the City, or any subdivision, agency, committee or board thereof, whether such individual is paid or unpaid.
- H. "Compensation" means anything of economic value, however designated, that is paid, loaned, granted or transferred, or to be paid, loaned, granted or transferred for, or in consideration of, personal services to any person.
- I. "Confidential information" means:
 - 1. Specific information, rather than generalized knowledge, that is not available to the general public on request; or
 - 2. Information made confidential by law including but not limited to taxpayer information, RCW 82.32.330; information regarding organized crime, RCW 43.43.856; criminal history information, Chapter 10.97 RCW; medical records, Chapter 70.02 RCW; and juvenile records, Chapter RCW 13.50 RCW; or

3. Information that is initially disclosed or discussed in executive session, and which is not available to the general public on request; however
 4. Confidential information does not include information authorized by the mayor or a majority vote of the council to be disclosed.
- J. "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement or a sales agreement.
- K. "De Minimis" means a violation of lesser significance, or a violation more technical than substantial.
- L. "Dishonesty" means behavior that intends to deceive or cheat people; untruthfulness; untrustworthiness. It is not possible to be negligently "dishonest."
- M. "Ethics Commission" means the commission established under Part 2 of this Chapter or the former commission established under Chapter 1.04A of the Spokane Municipal Code.
- N. "Employee" means any person holding a regularly compensated position of employment with the City but does not include elected officers and persons who serve without compensation on City boards and commissions.
- O. "Exempt employee" shall mean those City employees not represented by a recognized labor union and identified by both the City administration and the applicable labor unions as exempt confidential employees.
- P. "False and frivolous complaint" means a complaint with no basis in fact or law.
- Q. "Family member" means:
1. a spouse or domestic partner; or
 2. any dependent parent, parent-in-law, child or son-in-law or daughter-in-law; or
 3. any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the City officer or employee.
- R. "Gift" means anything of economic value or tangible worth for which no consideration is given. "Gift" does not include:
1. items from family members or friends where it is clear that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
 2. items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

3. items exchanged among officials and employees or a social event hosted or sponsored by a City officer or City employee for coworkers;
 4. payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
 5. items a City officer or City employee is authorized by law to accept;
 6. payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
 7. items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
 8. campaign contributions reported under chapter 42.17 RCW;
 9. discounts available to an individual as a member of an employee group, occupation or similar broad-based group;
 10. awards, prizes, scholarships or other items provided in recognition of academic or scientific achievement;
 11. attendance of a City officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the officer or employee as a City representative is appropriate;
 12. an award publicly presented in recognition of public service; or
 13. any item of nominal value which cannot reasonably be presumed to influence the vote, action or judgment of the City officer or employee, or be considered as part of a reward for action or inaction. An item of nominal value shall include incidental items associated with the professional conduct or courtesies of a City officer or employee's duty including the acceptance during the conduct of official business of such items as refreshments, note pads, pens, pins and books.
- S. "Head of agency" means the chief executive officer of an agency. For a city department established pursuant to the SMC, the agency head means the department head. In the case of an agency headed by a commission, board, committee or other body consisting of more than one natural person, agency head means the person or board authorized under the SMC or the City Charter to appoint agency employees and regulate their conduct.

- T. "Honorarium" means money or thing of value offered to a City officer or City employee for a speech, appearance, article or similar item or activity in connection with the City officer's or City employee's official role.
- U. "Household member" means any person having a close relationship with and residing in the same household of the City officer or employee, and having agreed to be jointly responsible for basic living expenses.
- V. "Jurisdiction," for purposes of SMC 1.04B.060, means that the Commission has authority to hear and decide an ethics complaint pursuant to this chapter.
- W. "Mitigating circumstances" means factors for the Commission's determination that might explain a violation, in whole or in part, or make the violation more understandable and/or less subject to condemnation.
- X. "Moral turpitude" is conduct that violates commonly accepted standards of good morals, honesty, and justice; the application of this standard depends upon the collective conscience and judgment of the members of the Commission.
- Y. "Person" means any individual, partnership, association, firm, institution or corporation, business or other entity, however constituted, organized or designated.
- Z. "Personal interest" means direct or indirect pecuniary or material benefit accruing to a City officer or employee as a result of legislation or a contract or transaction which is or may be the subject of an official act or action by or with the City, except for such contracts or transactions which confer similar benefits to all other persons and/or property similarly situated. For the purpose of this chapter, a City officer or employee is deemed to have a personal interest in the affairs of:
1. any person who is a City officer or employee's family member or household member, as defined in this chapter;
 2. any business entity in which the City officer or employee is an officer, director or employee;
 3. any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the City officer or employee;
 4. any person or business entity with whom a contractual relationship exists with the City officer or employee; provided, that a contractual obligation of less than five hundred dollars, or a commercially reasonable loan made in the ordinary course of business or a contract for a commercial retail sale shall not be deemed to create an interest in violation of this chapter.
- AA. "Regulatory agency" means any City board, commission, department or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

BB. "Represented employee" shall mean a City employee represented by a recognized labor union.

CC. "Responsibility" in connection with a transaction involving the City, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove or otherwise direct City action in respect of such transaction. The term includes any authority under City procurement policies or procedures to authorize the award of contracts or the acquisition of products or services on behalf of the City.

DD. "Staff Director" means the employee appointed by the City Attorney to, in addition to other responsibilities, assist the Ethics Commission in its duties.

EE. "Stipulation" means agreement.

Section 01.04B.030 Applicability

The Code of Ethics shall be applicable to all elected or appointed officers, all exempt confidential employees and all represented employees whose labor unions have entered into a collective bargaining agreement providing that compliance with the Code of Ethics is a condition of employment. The Code of Ethics shall not be applicable to represented employees whose labor unions have not entered into a collective bargaining agreement providing that compliance with the Code of Ethics is a condition of employment.

Section 01.04B.040 Limitation Period for Filing Complaints

Any complaints brought under this chapter must be commenced within three years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person who allegedly committed the violation, then the action must be commenced within three years from the date the violation was discovered or reasonably should have been discovered by any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation.

Section 01.04B.050 Ethics Violations – Prohibited Conduct

The following shall constitute a violation of this Code of Ethics:

A. General Prohibition Against Conflicts of Interest.

In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of conflict of interest or impropriety, no current City officer or employee shall have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that might be seen as conflicting with the City officer or employee's proper discharge of his or her official duties, the conduct of official City business or as adverse to the interests of the City. Performance of a legally required duty by a City officer or employee shall not be considered a violation of the Code of Ethics.

1. Any employee who becomes aware that he or she might have a potential conflict of interest that arises in the course of his or her official duties shall notify in writing his or her supervisor or appointing authority of the potential conflict. Elected officials shall report potential conflicts of interest to the City Attorney.
2. Upon receipt of such a notification, the supervisor or appointing authority shall take action to resolve the potential conflict of interest within a reasonable time, which may include, but is not limited to, designating an alternative employee to perform the duty that is involved in the potential conflict. The supervisor or appointing authority shall document the disposition of the potential conflict in writing in files maintained by the appointing authority. The supervisor or appointing authority may request an advisory opinion from the Ethics Commission before addressing and resolving of the potential conflict.
3. Upon receipt of such a notification from an elected official, the City Attorney shall recommend action to resolve the potential conflict of interest, which may include a request for an advisory opinion from the Ethics Commission.

B. Personal Interests in Contracts Prohibited.

No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she 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. Provided, this prohibition shall not apply where the City officer or employee has only a remote interest in the contract, 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 governing body 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 City officer(s) having the remote interest as defined below.

C. Remote Interest.

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

1. that of a non-salaried non-compensated officer of a nonprofit corporation;
2. 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;
3. that of a landlord or tenant of a contracting party;
4. 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.

D. Personal Influence in Contract Selection Prohibited.

No City officer or employee 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 City officer or employee has a personal interest in or with the corporation, person or firm,

unless such interest is a remote interest 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, as defined in the preceding section. Provided, however, that no City officer or employee may receive anything of value from the City as a result of any contract to which the City shall be a party except for the City officer or employee's salary or lawful compensation.

E. Representation of Private Person at City Proceeding Prohibited.

No City officer or employee shall appear on behalf of a private person, other than himself/herself or a family member or household member, as defined in this chapter, or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City officer in an official capacity is a party, or accept a retainer or compensation that is contingent upon a specific action by the City. Representation of a private person pursuant to a legally required duty by a City officer or employee is permitted and shall not be considered a violation of the Code of Ethics.

F. Certain Private Employment Prohibited.

No City officer or employee shall engage in or accept private employment, or render services for, any private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

G. Personal Interest in Legislation Prohibited.

No City officer or employee may benefit either directly or indirectly from any legislation or contract to which the City shall be a party except for the lawful compensation or salary of the City officer or employee unless such interest is a remote interest where the facts and extent of such interest is disclosed. City council members' participation in the enactment of legislation shall be governed by chapter 42.23 RCW – The Code of Ethics for Municipal Officers and chapter 42.36 RCW – The Appearance of Fairness Doctrine. City council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation, which has been disclosed, and the legislation is applicable to the general public and not unique to the council member.

H. Continuing Financial Interest.

Where a City officer, employee, or family member of a City officer or employee, has a substantial ongoing financial relationship with a corporation, firm, or person seeking a contract, or proposing to do business with the City, such City officer or employee shall not:

1. Influence or participate in the City's contract selection of or conduct business with such corporation, firm, or person; nor
2. Influence or participate in the City's contract selection of, or conduct business with, a corporation, firm, or party competing against a party that a City officer or employee has such a substantial ongoing financial relationship.

3. For purpose of this section, a substantial ongoing financial relationship is defined as: expanding beyond just a formal contractual relationship. Rather it encompasses any financial interest, direct or indirect, where a City officer, employee, or family member of a City officer or employee is involved in a client-service relationship in which:
 - a. the City officer, employee, or family member of a City officer or employee, receives a substantial portion of his or her revenue or like compensation through such relationship, whether received through his or her corporation, firm, or as an individual; or
 - b. such client-service relationship is likely to continue to provide considerable potential business or has provided substantial business in the past. This does not include prior financial relationships that are so far removed in time or rare in frequency as to be insignificant.
4. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy.

I. Disclosure of Confidential Information

1. Disclosure of Confidential Information

No City officer or employee shall, except as required or reasonably believed to be required for the performance of his/her duties, disclose confidential information gained by reason of his/her official position or use such information for his/her own personal interest. "Confidential information" is all information, whether transmitted orally or in writing, that the employee has been informed, is aware, or has reason to believe is intended to be used only for city purposes, is not intended for public disclosure, or is otherwise of such a nature that it is not, at the time, a matter of public record or public knowledge.

2. Confidential information includes, but is not limited to, personal information regarding City officials and employees; private financial and other personal information provided by city taxpayers, license holders, contractors, and customers; intelligence and investigative information, including the identity of persons filing complaints; formulas, designs, drawings, and research data obtained or produced by the city and preliminary, non-final assessments, opinions, and recommendations concerning city policies and actions. Any public official who is uncertain as to whether certain information is confidential should consult the City Attorney. An employee who is uncertain as to whether certain information is confidential should consult their immediate supervisor or department head.

J. Acceptance of Compensation, Gifts, Favors, Rewards or Gratuity.

City employees shall not, directly or indirectly, solicit any gift or give or receive any gift, whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

1. It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
2. The gift was intended to serve as a reward for any official action on their part. Public officials and city employees may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, cookies/snacks and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed one hundred dollars in value in any twelve-month period. City employees should report any gift to their immediate supervisor. This section shall not apply to gifts made to the city. All such gifts shall be given to the mayor for official disposition. This prohibition shall not apply to those items which are excluded from the definition of gift in SMC 1.04A.020.

K. Fair and Equitable Treatment.

1. No City officer or employee shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use position to secure special privileges or exceptions for himself/herself or for the benefit, gain or profits of any other persons.
2. No City officer or employee shall employ or use the employment of any person under the City officer's or employee's official control or direction for the personal benefit, gain or profit of the City officer or employee or another beyond that which is available to every other person.
3. No City officer or employee shall use City-owned vehicles, equipment, materials, money or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business (not personal use), and for such purposes and under such conditions as can be reasonably expected to be approved by City policies.
4. Except as authorized by law and in the course of his or her official duties, no City officer or employee shall use the power or authority of his or her office or position with the City in a manner intended to induce or coerce any other person to provide such City employee or any other person with any compensation, gift, or other thing of value directly or indirectly.
5. City Officers and employees are encouraged to participate in the political process on their own time and outside of the workplace by working on campaigns for the election of any person to any office or for the promotion of or opposition to any ballot proposition, but shall not use or authorize the use of City facilities or resources for such purposes except as authorized by the provisions of RCW 42.17A.555.

L. False and Frivolous complaints prohibited.

No person subject to the Code of Ethics shall knowingly file a false complaint or report of a violation of this Code of Ethics. A person who files a complaint with a good faith belief that a violation of the Code of Ethics has occurred shall be protected by the City's Whistleblower Protection policy as set forth in SMC 1.04A.180.

M. Aiding others prohibited.

No City officer or employee may knowingly aid or assist any City officer or employee in the violation of any provision of this Code of Ethics.

N. Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

No City officer or employee shall commit any act of moral turpitude or dishonesty relating to his or her duties or position as a City officer or employee or arising from business with the City. Conviction of a felony or a misdemeanor involving moral turpitude or dishonesty, the nature of which demonstrates lack of fitness for the position held, shall be considered conclusive evidence of a violation of this Code of Ethics. Demonstrated acts of moral turpitude or dishonesty are not limited to felony or misdemeanor criminal convictions.

O. Prohibited Conduct After Leaving City Service.

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

No former City officer or employee shall disclose or use any privileged, confidential or proprietary information gained because of his or her City employment.

2. Participation in City Matters Prohibited.

No former City officer or employee shall, within a period of one year after leaving City office or employment:

- a. participate in matters involving the City if, while in the course of employment with the City, the former City officer or employee was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter;
- b. represent any person as an advocate in any matter in which the former City officer or employee was involved while a City officer or employee; 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.

3. Duty to Inform.

Whenever a City officer or employee wishes to contract with a former City officer or employee for expert or consultant services within one year of the latter's leaving City service, advance notice shall be given to and approval received from the Ethics Commission. Said approval shall be in written form and copied to the mayor at the same time that it is given to the individual making the request.

4. Exceptions.

- a. The prohibitions of subsections (2)(a) and (2)(b) of this section shall not apply to a former City officer or employee acting on behalf of a governmental agency if the Ethics Commission has determined that the service to the agency is not adverse to the interest of the City.

- b. Nothing in this chapter shall prohibit an official elected to serve a governmental entity other than the City of Spokane from carrying out their official duties for that government entity.
5. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy. If a firm or person doing business with the City assists an employee in violating the provisions of the Code, the firm or business may be disbarred, excluded from contracting with the City for 5 years.

P. Failure to Produce Public Records

No City officer or employee shall willfully and without just cause delay or fail to produce any city records in his or her possession or control in response to a public records request filed with the city pursuant to Chapter 42.56 RCW.

1. A “city record” is a “public record” as defined by RCW 42.56.010(3).
2. “Just cause” to delay or fail to produce means:
 - a. A reasonable belief that production of the record is exempt from public disclosure pursuant to Chapter 42.56 RCW or other statute which exempts or prohibits disclosure of specific information or records; and/or
 - b. The city record is subject to legal review to determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW; and/or
 - c. The requester has been notified in writing that additional time is required to produce the city record and/or determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW.

PART 2 – ETHICS COMMISSION

Section 01.04B.060 Jurisdiction of the Ethics Commission

The Ethics Commission has jurisdiction over all complaints alleging prohibited conduct in violation of the City’s Code of Ethics. The Commission is authorized to conduct public hearings and issue written decisions adjudicating all complaints under this chapter.

Section 01.04B.070 Duties and Powers

- A. It is the duty of the Ethics Commission to serve as a tribunal for the adjudication of complaints whenever someone has alleged a violation of this chapter. For this purpose, the Commission has a duty to consider all evidence in determining whether such a violation occurred and in setting an appropriate penalty.

- B. The Ethics Commission is authorized to compel the attendance of witnesses, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter before the Commission. For witnesses who refuse to attend and give testimony at a hearing, the Ethics Commission may petition the superior court for a subpoena requiring the person to appear and to produce evidence if so ordered, or to give testimony concerning the matter before the Commission. Failure to obey such order of the court may be punished by the court as contempt.
- C. The Ethics Commission is authorized to establish operating policies, procedures, forms, and rules consistent with this chapter, subject to the approval of the City Council. The Ethics Commission shall review its policies and procedure annually and shall make modifications as necessary. The Commission shall maintain a manual of such policies and procedures which shall be posted and maintained as part of the City's website.
- D. The Ethics Commission may, when circumstances make it necessary to do so, retain outside legal counsel and other experts, as needed, after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office).
- E. The Ethics Commission may make recommendations to the City Council for amendments to this chapter and for such other legislation affecting the subject matter of this chapter as the Ethics Commission may deem necessary or desirable.
- F. The Ethics Commission shall develop educational programs which inform agencies, public officials and city officers and employees about City, state and federal ethics laws, and the importance of ethics to the public's confidence in municipal government.

Section 01.04B.080 Composition of the Ethics Commission

- A. The Ethics Commission shall be comprised of seven members who shall be appointed by the mayor and confirmed by the city council. The initial six members shall be appointed for a one-, two- and three-year term and may be reappointed for one additional three-year term. The seventh member who shall be appointed by members of the Ethics Commission shall serve an initial three-year term and may be reappointed for a second three-year term.
- B. Four members of the Commission shall constitute a quorum for conducting a meeting and transaction of business. A simple majority of the quorum is necessary to take action, other than action by the Commission in determining and issuing its written findings and conclusions regarding a complaint, inquiry or request for an advisory opinion, which shall require four affirmative votes of the Commission members present for the meeting.
- C. The Ethics Commission appointees shall include representatives from the following segments of the community:
 - 1. A person with a professional or academic background in the legal profession including attorneys, law professors, administrative law judges, or members of the judiciary.
 - 2. A person from local business with experience in human resources/personnel.

3. A person who possesses familiarity with government and the political process.
 4. A person with experience in ethics.
- D. All reasonable efforts shall be used to locate individuals who satisfy the requirements in subsection (A). In the event that any one of the requirements in subsection (A) cannot reasonably be satisfied, a substitute may be appointed. The substitute shall have a background in a profession which includes a code of ethics as an element of the profession.
- E. The City Attorney shall appoint a Staff Director to the Ethics Commission. The Staff Director shall provide assistance to the Commission as necessary for the Commission to fulfill its obligations and duties.
- F. Commission members shall serve without compensation.

Section 01.04B.090 Restrictions on Ethics Commission Members

A. Restrictions on Holding Office.

No member or employee of the Ethics Commission may hold any other City or County office, or be an officer of a political party.

B. Restrictions on Employment.

No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City or County and no employee of the Commission may hold any other employment with the City or County.

C. Restrictions on Political Activities.

No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions to or soliciting contributions from any person within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure or participating in decisions by organizations to participate in a campaign.

D. Restrictions after Employment.

Members of the Ethics Commission are subject to the post - employment restrictions set forth in the City of Spokane Code of Ethics.

Section 01.04B.100 Proper Conduct and Avoiding Impropriety

Members of the Ethics Commission are to exercise the utmost care in their communications concerning matters pending before the Commission.

- A. Once the Ethics Commission has received a recommendation from an investigator that a hearing be held, members of the Ethics Commission may only discuss a complaint at a lawfully conducted meeting.
- B. Members of the Commission may not take testimony or entertain comments from any person regarding a complaint except as presented in an investigative report or in the course of a duly noticed public hearing.
- C. Members of the Ethics Commission shall avoid discussing or commenting on a complaint during the pendency of an investigation.
- D. Any Commission member who has a conflict of interest with respect to a specific complaint before the Ethics Commission, pursuant to SMC 1.04B.050, shall recuse himself or herself from hearing that complaint but shall remain a member of the Commission for future complaints.
- E. To avoid the appearance of impropriety and undue influence, no member of the Commission may communicate directly or indirectly with the investigator, any party, or any other person about any issue of fact or law regarding a complaint that has been filed, during investigation and during the pendency of proceedings before the Ethics Commission, except in the course of seeking or obtaining legal advice from the City Attorney or, in the event of a conflict, from independent legal counsel.
- F. If any person attempts to communicate with a Commission member regarding a pending complaint, the Commission member shall immediately report the communication to the Commission Chair and shall relate the substance of the communication to the full Commission on the record at the next regular meeting of the Commission.
- G. Commission deliberations on complaints are exempt from the Open Public Meetings Act, so deliberations may be conducted outside the presence of the public.

Section 01.04B.110 Training

- A. The Ethics Commission, with the assistance of the Staff Director, shall prepare, distribute and periodically update an employee handbook on the Code of Ethics, after obtaining the city attorney's review. In addition to the updates the Commission shall disseminate any change in policy that results from a finding of the Commission if it applies to other city employees.
- B. Every appointing authority shall give a copy or electronic version of the handbook and any updates to each employee annually and shall provide annual training to employees regarding the Code of Ethics. Each City employee or official shall read and agree in writing to the City of Spokane Code of Ethics.
- C. Information shall be provided to employees terminating city service regarding the restrictions on former city employees.

Section 01.04B.120 Vacancy and Removal

- A. In the event a vacancy occurs, the mayor shall appoint a qualified person to complete the remainder of the term.
 - 1. A member of the Commission may be removed only for misconduct pursuant to this chapter.
 - 2. Any member of the Ethics Commission guilty of official misconduct or convicted of a crime involving moral turpitude or dishonesty shall be removed by the city council upon recommendation by the mayor.

Section 01.04B.130 Advisory Opinion

- A. Upon request of any employee, the mayor or a member of the city council, or any City Officer, the Ethics Commission may also render written advisory opinions concerning the applicability of the Code to hypothetical circumstances and/or situations solely related to the persons making the request.
- B. Upon request of the mayor, or two members of the city council, the Ethics Commission may also render written advisory opinions concerning the applicability of the code to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

PART 3 – ETHICS COMPLAINTS

Section 01.04B.140 Initiating an Ethics Complaint

- A. Any person may file a complaint alleging that a current City officer or employee has engaged in prohibited conduct in violation of the City's Code of Ethics.
- B. A complaint must be in writing, on a form approved by the Ethics Commission, and it must describe the allegations with sufficient detail to enable both the Commission and the person who is the subject of the complaint to reasonably understand the nature of the complaint. The complaint must be signed, dated, and filed with the City Clerk's Office, and it must include a statement indicating that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true.
- C. Once a complaint has been filed, copies of the complaint shall be forwarded to the City Attorney's Office for initial review.

Section 01.04B.150 Preliminary Review of Ethics Complaint

- A. Preliminary Review of Complaint

Upon receipt of a complaint, the City Attorney's Office shall conduct a preliminary review to determine whether the allegations, if proven, establish a violation of the City's Code of Ethics.

1. If, upon preliminary review of the complaint, the City Attorney finds that the respondent is not subject to the Code of Ethics or that the complaint fails to allege facts which, if proven, establish an ethics violation, the City Attorney shall provide to the Ethics Commission a written notification of this finding with a recommendation that the Commission Chair summarily dismiss the complaint. The complainant shall also be provided notification of this finding and recommendation. A decision by the Chair to summarily dismiss a complaint based upon the recommendation of the City Attorney pursuant to this subsection may be appealed by the complainant to the Ethics Commission by filing an appeal within ten days of the date of the Chair's decision with the City Clerk's Office. In the event of an appeal, the Chair shall not participate in the Commission's deliberation or decision. The appeal will be determined by the remaining members of the Commission. A determination by the Commission to affirm the decision of the Chair shall be final with no further appeal rights.
2. If, in the opinion of the City Attorney, the complaint fails to establish a prima facie ethics violation based upon the facts alleged in the complaint, the City Attorney shall provide written notification to Ethics Commission of his or her opinion and recommendation that complaint be dismissed, and shall provide the Commission with a proposed order of dismissal. The complainant shall also be provided notification of this opinion. A decision of the Ethics Commission to dismiss a complaint based upon the recommendation of the City Attorney pursuant to this subsection may be appealed by the complainant to the Hearing Examiner by filing an appeal with the Hearing Examiner's Office within ten days of the date of the Ethics Commission's decision. The only matter before the Hearing Examiner on appeal is whether the complainant has established a prima facie ethics violation based upon the facts alleged in the complaint.
3. If, upon preliminary review of the complaint, the City Attorney determines that the complaint alleges facts that, if proven, establish an ethics violation, the complaint shall be forwarded to an independent investigator to commence an investigation for purposes of determining whether there is reasonable cause to believe that a violation of the Code of Ethics has occurred.

Section 01.04B.160 Investigation of Complaint

- A. If an investigation is commenced, the City Attorney shall provide written notification to the complainant and to subject of the complaint, of his or her decision to refer the matter to an independent investigator for formal investigation to determine if a violation has occurred. A copy of the complaint shall be served on the subject of the complaint.
- B. Once an independent investigator has been identified, a copy of the complaint shall be forwarded to the investigator, who shall contact and conduct interviews of the complainant,

the subject of the complaint, and of any individuals with knowledge of the facts pertaining to the allegations in the complaint. The investigator shall also seek to obtain and evaluate any additional evidence, such as documentary evidence, in an effort to determine whether there is reasonable cause to believe the subject of the complaint has committed a violation of the City's Code of Ethics.

- C. Once the investigator has conducted interviews and has reviewed all other relevant evidence, he or she shall prepare an investigative report detailing his or her findings.

Section 01.04B.170 Post-Investigation Procedures

- A. If the investigator finds that the evidence fails to establish that the subject of the complaint has committed prohibited conduct, the independent investigator shall prepare an investigative report with a recommendation of that the complaint be dismissed.

1. Whenever an investigator makes a recommendation of dismissal, the investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission for a final decision on dismissal. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint.
2. Upon receipt of an investigator's investigative report and a recommendation of dismissal, the Ethics Commission may enter an order of dismissal, copies of which shall be served on the complainant and on the subject of the complaint.

- B. If, after investigation, the independent investigator determines that there is reasonable cause to believe the subject of the complaint has committed prohibited conduct in violation of the Code of Ethics, he or she shall prepare an investigative report detailing the evidence and stating the basis for his or her determination. The investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission with a recommendation that a hearing be held. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint.

C. Response by Subject of Complaint

1. If the subject of the complaint accepts the findings of the investigative report, he or she may stipulate to the violation. In such instance, the matter will proceed to a hearing before the Ethics Commission for adoption of the stipulation and imposition of a penalty.
2. If the subject of the complaint contests the findings detailed within the investigative report or fails to respond to the findings of the investigative report, the matter shall proceed to a contested hearing before the Ethics Commission.

PART 4 – HEARING AND ADJUDICATION

Section 01.04B.180 Commencement of Proceedings

- A. Upon receipt of an investigative report recommending that hearing be held, the Ethics Commission shall conduct a formal hearing at which it may consider the findings contained within the investigative report submitted by the independent investigator. The Commission may also consider testimony taken from witnesses and any other evidence presented at the hearing.
- B. If the Commission determines that witness testimony is necessary to establish the factual record, the Commission may issue a prehearing order requiring witness testimony. If it appears that subpoenas are required to compel the attendance of witnesses, the Commission may direct that judicial subpoenas be obtained.

Section 01.04B.190 Hearing Procedures

A. Proceedings Recorded and Open to the Public

- 1. All hearings of the Ethics Commission shall be conducted as contested hearings under rules adopted by the Ethics Commission. All hearings shall be open to the public.
- 2. All hearings before the Ethics Commission shall be recorded.
- 3. The record of the hearings, as well as all documents submitted in regards to the complaint and the Ethics Commission's investigation, shall be subject to public disclosure under chapter 42.56 RCW.

B. Preliminary Matters

- 1. The subject of a complaint may elect to be represented by legal counsel or to have a union representative represent them at the hearing.
- 2. Prior to the commencement of the hearing, the Commission may consider preliminary matters raised by the parties, including motions brought by either party, such as a motion to dismiss.
- 3. The Ethics Commission is not bound by the rules of evidence for Washington courts but may use these rules when determining the relevance of, and weight to be given to, any evidence presented. The final decision of the Ethics Commission shall rely upon evidence they deem to be reliable and trustworthy and which establishes a violation by a preponderance of the evidence.
- 4. Upon the agreement of the parties, the Commission may consolidate for hearing multiple complaints when the facts underlying the complaints arise out of the same transactions or occurrences.

C. Presentation of Evidence

1. At the commencement of the hearing, the Ethics Commission shall introduce the case and take judicial notice of the investigative report and any related documents or exhibits that are referenced in the investigator's report. This report and all related documents shall become part of the record and shall be considered in the Commission's final decision.
2. The Commission shall allow the complainant and the subject of the complaint to present witnesses at the hearing to supplement the evidence detailed within, and documents attached to, the investigative report submitted by the independent investigator.
3. The Commission shall allow each party to submit additional evidence, such as affidavits and documentary evidence. The Commission shall consider issues of authenticity and reliability in deciding whether to consider, and what weight to assign to, such evidence.
4. At the conclusion of all testimony and the presentation of documentary evidence, the Commission shall give each party the opportunity to summarize the evidence in a brief closing statement.

F. Deliberation and Decision

1. At the conclusion of closing statements, the Commission shall adjourn the proceedings and begin deliberations to determine whether or not a violation of the Code of Ethics has occurred.
2. Once the Commission adjourns back into open session and has made its final determination, the Commission shall issue written findings of fact and conclusions of law, along with the disposition. All such findings and conclusions and the disposition shall be reviewed by the city attorney (or independent legal counsel in the event that a conflict of interest prevents the city attorney from conducting the review) prior to their issuance.

Section 01.04B.200 Dismissal of a Complaint

- A. Summary dismissal of a complaint by the Chair of the Ethics Commission after review by the City Attorney, pursuant to SMC 01.04B.150, shall occur in the following circumstances:
 1. The respondent is not subject to the Code of Ethics
 2. The allegations, if true, would not constitute prohibited conduct in violation of the Code of Ethics.
- B. Dismissal of a complaint by the full Ethics Commission after hearing may be based upon any of the following grounds:
 1. The alleged violation is a minor or de minimis violation;
 2. The complaint or inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;
 3. The matter has become moot because the person who is the subject of the complaint is no longer a City officer or employee;

4. The appointing authority has already taken action as a result of finding a violation and the Commission finds that the action has sufficiently addressed the matter;
 5. The respondent previously requested and followed the documented advice regarding compliance with the Ethics Code provided by the legal counsel for the Ethics Commission; or
 6. The respondent was previously the subject of a prior ethics complaint based upon the same set of facts and alleging the same violation(s) of the Code of Ethics and regarding which the Ethics Commission issued a decision.
- C. The Ethics Commission shall issue a written decision setting forth the legal and/or factual basis for the dismissal, which shall be provided to the complainant and the subject of the complaint. The complainant may appeal the Commission's decision to dismiss a complaint to the City's Hearing Examiner within ten days of the date of the Commission's decision.

Section 01.04B.210 Penalties

- A. Upon a determination by the Ethics Commission that a violation has occurred, or upon a stipulation to a violation, the party found to be in violation may be subject to one or more of the following penalties, which may be imposed by the Ethics Commission:
1. A cease and desist order as to violations of this Code of Ethics.
 2. A recommendation to the city council that an appointed committee or commission member be removed from the board or commission.
 3. An order to pay to the City damages sustained by the City that are caused by the conduct constituting the violation.
 4. In the case of a violator who receives wages from the City, a civil penalty of up to five thousand dollars per violation or three times the economic value of anything received or sought in violation of this chapter or rules adopted under it, whichever is greater, may be imposed. Alternatively, the violator who is a member of a board or commission may be suspended for a number of days to be decided by the Ethics Commission, in lieu of fine but not in lieu of damages.
 5. In the case of an elected official, a written reprimand may be issued by the Ethics Commission if the Commission determines that while the elected official did violate the Ethics Code, there was no intent to commit the violation. The written reprimand shall set for the nature of the violation, the elected official's response and the reasons why a reprimand is appropriate. The written reprimand shall be filed with the City Clerk and placed in the City Council minutes. A written reprimand may not be issued, however, if the elected official stipulates to the decision of the Hearing Examiner, as provided in SMC 01.04B.080(C)(3).
 6. An employee of the City who commits a violation of this chapter may be subjected to disciplinary action, up to and including termination from employment; provided that

such disciplinary action is consistent with civil service guidelines and any applicable collective bargaining agreement.

7. Costs, including reasonable investigative costs, shall be included as part of the limit under subsection (A)(4) of this section. Costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.
8. As appropriate, the Ethics Commission may refer the disposition of a complaint to the City or County prosecuting attorney's office for appropriate action.
9. Damages under this section may be enforced in the same manner as a judgment in a civil court.

Section 01.04B.220 Recall of Elected Official for Violation of Code of Ethics

- A. Pursuant to City Charter Section 8.5, the City Council may consider a resolution to place an elected official's name on a recall ballot based upon the Ethics Commission's recommendation to the City Council that the elected official be subject to a recall election. The Ethics Commission must determine that:
 1. an elected official of the City has knowingly committed a violation of the Code of Ethics,
 2. the violation constitutes moral turpitude rendering the elected official unfit to remain in office, and
 3. there are no mitigating circumstances.
- B. In considering whether to place an elected official's name on a recall ballot, the City Council shall have a resolution submitted to the City Clerk's office setting forth the Ethics Commission's determination and recommendation regarding the violation of the Code of Ethics and calling for a public hearing on the matter. The City Council shall schedule a hearing at least thirty days from the date the resolution is submitted to the City Clerk's office. A copy of the resolution and hearing date shall be personally served upon the elected official. At the time the City Council is scheduled to consider the resolution, the chair of the Ethics Commission or the Ethics Commission's designee shall appear before the city council to present the Ethics Commission's determination and recommendation. The Ethics Commission shall deliver to the City Council all records maintained by the Commission created pursuant to its review and determination of the matter. The elected official who is the subject of the Ethics Commission's shall be given an opportunity to respond to the Ethics Commission's determination and recommendation and to present argument against passage of the resolution by the City Council to place the elected officials name on a recall ballot. Both the Ethics Commission's representative and the elected official shall be permitted to respond to questions from the City Council.
- C. The City Council, by a majority plus one vote of the City Council, may pass the resolution to place the elected official's name on a recall election ballot for action by the voters of the City on the next available general or special election established by state law. The City Clerk's office shall forward the required resolution to the Spokane County auditor's office pursuant to state law requesting the ballot proposition be placed on the next available general or special election. The City Attorney's office shall be responsible for preparing a

ballot synopsis for the recall election and any necessary resolutions or other legal documents.

- D. If approved by a majority of the electors voting in the election, the elected official shall be removed from office effective the date the recall election results are certified by the Spokane County auditor.

PART 5 – APPEAL

Section 01.04B.230 Notice of Appeal

- A. Any person who has been found to have violated this chapter and has been assessed a monetary penalty, subjected to disciplinary action, or removed from office for a violation of this chapter may file an appeal to the City’s Hearing Examiner by delivering a written notice of appeal to the City Clerk’s Office within twenty days of receiving a decision of the Ethics Commission finding a violation and imposing a penalty.
- B. Any person who has filed a complaint with the Ethics Commission and has subsequently received a written decision by the Ethics Commission dismissing the complaint pursuant to SMC 01.04B.200.B may file an appeal to the City’s Hearing Examiner by delivering a written notice of appeal to the City Clerk’s Office within twenty days of receiving a decision of the Ethics Commission regarding a written decision dismissing the complaint.
- C. The notice of appeal shall be in writing and shall include the mailing address and, if different, the street address where papers may be served on the appellant. The notice of appeal shall contain, in separate numbered paragraphs, statements of the specific findings of fact, conclusions of law, or aspects of the fine and/or cost bill on which the appellant seeks review, the basis for the appeal, and a brief statement of the relief requested. The person filing the appeal shall attach a copy of the decision being appealed.
- D. Within ten days of the filing of the notice of appeal, the City Clerk shall forward to the Ethics Commission a copy of the written notice of appeal. A copy shall also be sent to the adverse party.

Section 01.04B.240 Record of Proceedings and Exhibits Transmitted to Hearing Examiner

- A. The City Clerk shall provide the Hearing Examiner with a complete copy of the record, including copy of the complaint, the investigative report and related records of the independent investigator, recorded proceedings and all documents offered into evidence at the Ethics Commission hearing within twenty days of receiving a copy of the written notice of appeal.

Section 01.04B.250 Procedures for Review on Appeal

- A. The Hearing Examiner shall conduct a review of the entire record as if the case was being heard for the first time.

- B. In deciding whether there has been a violation of the Code of Ethics, the Hearing Examiner may only consider evidence that is already in the record, including the investigative report and related documents as well as the recorded proceedings of the hearing before the Ethics Commission.
- C. Any decision to reverse the Ethics Commission's decision finding of a violation must be based on the conclusion that the Commission's decision was arbitrary, capricious, or not supported by the evidence.
- D. In appeals of monetary penalties, the Hearing Examiner may allow additional testimony and may therefore convene a hearing for this limited purpose. The Hearing Examiner may modify the amount of any monetary penalty imposed by the Commission.
- E. The Commission's decision shall be deemed to have been upheld unless the Hearing Examiner reverses or modifies the Commission's decision within seventy-five days after the notice of appeal is filed.
- F. A person who receives an adverse ruling from the Hearing Examiner after appealing the decision of the Ethics Commission may seek judicial review of the ruling.

Section 2. That Chapter 01.04A of the Spokane Municipal Code is hereby repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 4. Clerical Errors. Upon approval by the city attorney, the city clerk is authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

PASSED by the City Council on _____

Council President

Attest:

Approved as to form:

City Clerk

City Attorney

Mayor

Date

Effective Date

ORDINANCE NO. C - _____

An ordinance relating to Whistleblower Protection; adopting a new Chapter 01.04C of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That there is adopted a new Chapter 01.04C of the Spokane Municipal Code to read as follows:

Chapter 01.04C Whistleblower Protection

Section 01.04C.010 General

This subsection implements Washington State's Local Government Whistleblower Protection Act, Chapter 42.41 RCW.

Section 01.04C.020 Departments and Divisions Affected

This subsection shall apply to all City divisions and departments.

Section 01.04C.030 Definitions

- A. "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.
- B. "Improper governmental action" means any action by a local government officer or employee:
 - 1. that is undertaken in the performance of the officer's or employee's official duties, whether or not within the scope of the employee's employment, and
 - 2. that is in violation of any federal, state or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. The phrase does not include any personnel or labor actions.
- C. "Retaliatory action" means:
 - 1. any adverse change in an 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 or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or

2. hostile actions by another employee towards the employee that were encouraged by a supervisor or senior manager or official.

Section 01.04C.040 Policy

It is the policy of the City of Spokane to encourage employees to report information concerning any allegedly improper action by the City's officers or employees. It is further the policy of the City to prevent retaliation against any employee who in good faith reports such allegedly improper action. Employees who feel they have been retaliated against may appeal to the hearing examiner.

Section 01.04C.050 Procedure

A. Reporting Allegedly Improper Action

1. Every City employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.
2. Any City employee who desires to report allegedly improper governmental action shall first report in writing such action to one of the following persons:
 - 1) the hearing examiner, or;
 - 2) human resources director, or;
 - 3) county prosecuting attorney.

It is the responsibility of the receiving official to forward the information on to the Whistleblower Panel comprised of a representative from the human resources department, the office of the city attorney, the city council office selected by the city council, the finance, treasury and administration department and the employee's bargaining unit representative. A member of the Whistleblower Panel who is also the subject of a complaint shall recuse themselves from the investigation.

3. The Whistleblower Panel shall investigate the received complaint (to include the hiring of outside investigators, if needed) and make a final report to the complainant and the Human Resources Director. The Panel shall endeavor to have a final report within ninety (90) working days of convening. A copy of the report shall be provided to the Human Resources Director and the complainant upon completion. If the Panel fails to complete its report within ninety days, the Panel shall provide an explanation to the complainant for the delay and an estimated completion date.
4. Except in the case of an emergency, an employee shall NOT provide information of an improper governmental action to a person or an entity who is not a public official or person listed in subsection 6.1.2 above. An employee who fails to make a good faith attempt to follow this procedure shall not receive the protections of this subsection or the State Whistleblower Protection Act.
5. The City *shall* keep confidential the identity of the person reporting to the extent possible under law, unless the employee authorizes in writing the disclosure of his or her identity.

B. Retaliatory Action Forbidden

1. No City official or employee may take retaliatory action against a City employee because the employee provided information in good faith in accordance with the provisions of this subsection that an improper governmental action occurred.
2. If an employee believes she or he has been retaliated against in violation of this subsection, the employee must provide a written notice of the charge or retaliatory action to the Hearing Examiner of the City. The notice must specify the alleged retaliatory action, and the relief requested.
3. The charge must be delivered to the Hearing Examiner no later than sixty (60) calendar days after the occurrence of the alleged retaliatory action or the date the employee reasonably should have been aware that retaliation has taken place. The City will then have thirty (30) calendar days to respond to the charge and the request for relief.
4. Upon receipt of either the response by the City or after the lapse of the thirty (30) calendar days, the employee may request a hearing to determine whether a retaliatory action has occurred and to obtain appropriate relief. The request for a hearing must be made within fifteen (15) calendar days of receipt of the response by the City or the lapse of the City's thirty (30) calendar day response time. Requests must be in writing and made to the City Hearing Examiner.
5. If the claimant has met all the time requirements, the hearing examiner will hold a hearing. The burden of proof is on the employee to prove his or her claim by a preponderance of the evidence. The hearing examiner will issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five (45) calendar days following the request for hearing. The hearing examiner may grant extensions of time upon the request of either party upon a showing of good cause or on his or her own motion.
6. The hearing examiner may grant the following relief, as appropriate: reinstatement, with or without back pay, and injunctive relief as may be necessary to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The hearing examiner may award costs and reasonable attorneys' fees to the prevailing party. The hearing examiner may also impose a civil penalty of up to five thousand dollars (\$5,000) payable by each person found to have retaliated against the employee and may recommend to the City that the person found to have retaliated be suspended or discharged.
7. Either party may appeal to Superior Court from an adverse determination by the hearing examiner. The hearing examiner's decision is subject to judicial review under the arbitrary and capricious standard.

Section 01.04C.060 Responsibilities

The human resources department shall administer this subsection.

Section 01.04C.070 Severability

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.

PASSED by the City Council on _____

Council President

Attest:

Approved as to form:

City Clerk

City Attorney

Mayor

Date

Effective Date