

AGENDA

FOR THE REGULAR MEETING
OF THE CITY COUNCIL FOR
THE CITY OF THORNE BAY, ALASKA
TUESDAY, May 18, 2021
TIME: 6:30 p.m.

LOCATION: TELECONFERENCE/VIDEO CONFERENCING LINE

Phone Number: 1-408-418-9388

Meeting Weblink:

<https://cityofthornebay.my.webex.com/cityofthornebay.my/j.php?MTID=m42b083fd76962762fbfe73f3a84b405b>

Meeting number (access code): **182 229 9375**

Meeting password: **D4gxVSXpz84** (34498797 from phones and video systems)

- 1) CALL TO ORDER:
- 2) PLEDGE TO FLAG:
- 3) ROLL CALL:
- 4) APPROVAL OF AGENDA:
- 5) MAYOR'S REPORT:
- 6) ADMINISTRATIVE REPORTS:
 - a) City Administrator:
 - b) City Clerk:
- 7) PUBLIC COMMENTS:
- 8) COUNCIL COMMENTS:
- 9) CONSENT AGENDA
- 10) CONTINUING BUSINESS:
- 11) NEW BUSINESS:

More ways to join on WebEx

Tap to join from a mobile device (attendees only)

Join by video system

Dial: **1822299375@webex.com**

You can also dial **173.243.2.68** and enter your meeting number.

Join by phone

+1-408-418-9388 United States Toll

Access code: **182 229 9375**

Password: **D4gxVSXpz84** (34498797 from phones and video systems)

- a) **Resolution 21-05-18-01**, authorizing Lease Renewal with Community Connections for the lease of City owned property near City Hall, discussion and action item:
- b) **Resolution 21-05-18-02**, authorizing the donation of \$1,000.00, to VOCTEC Educational Facility, discussion and action item:
- c) Council review of Thorne Bay Municipal Code 2.04.100 – Vacancies, discussion and possible action item:

12) ORDINANCE FOR INTRODUCTION:

- a) **Ordinance 21-06-01-01**, amending Title 2 – Administration and Personnel adding, Chapters 2.06–Conflict of Interest & 2.07 – Code of Ethics, discussion and action item:

13) EXECUTIVE SESSION:

- a) The Council will adjourn to an Executive Session to discuss matters that may tend to prejudice the character or reputation of any persons:

Topic of discussion will be:

- Ethical Behavior Standards of Elected and Appointed officials, discussion and possible action item:

14) CONTINUATION OF PUBLIC COMMENT:

15) CONTINUATION OF COUNCIL COMMENT:

16) ADJOURNMENT:

HOW TO PARTICIPATE:

City Council Meeting

Tuesday, May 18, 2021 6:30 pm

Meeting link:

<https://cityofthornebay.my.webex.com/cityofthornebay.my/j.php?MTID=m42b083fd76962762fbfe73f3a84b405b>

Meeting number: **182 229 9375**

Password: **D4gxVSXpz84** (34498797 from phones and video systems)

Join by video system

Dial **1823383373@webex.com**

You can also dial **173.243.2.68** and enter your meeting number:

Join by phone

Call: **1-408-418-9388**

Access code: **182 229 9375**



CITY OF THORNE BAY

2.04.100 VACANCIES.

An elected city office is vacated under the following conditions.

The council shall declare an elective office vacant when the person elected:

- A. Fails to qualify or take office within thirty days after his election or appointment;
- B. Is physically absent from the city for a ninety-day period, unless excused by council;
- C. Resigns and his resignation is accepted;
- D. Is physically or mentally unable to perform the duties of his office;
- E. Is removed from office;
- F. Misses three unexcused regular or special meetings within a one-year period; or
- G. Is convicted of a felony or of an offense involving a violation of his oath of office.



CITY OF THORNE BAY
RESOLUTION 21-05-18-01

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, APPROVING THE RENEWAL OF SHORT-TERM LEASE WITH COMMUNITY CONNECTIONS FOR LEASE OF CITY OWNED LANDS LOCATED AT 122 FREEMAN DRIVE

WHEREAS, the City Council is the governing body of the City of Thorne Bay; and

WHEREAS, The current lease between Community Connection and the City at the is set to expire May 31, 2021; and

WHEREAS, the Thorne Bay Municipal Code 2.56.240-provides that negotiated leasing may be conducted with a single prospective lessee or renter through the use of resolution; and

WHEREAS, Community Connections entered into a short-term lease with the City of Thorne Bay on June 1, 2016, and has remained in good standing with the agreement; and

WHEREAS, it is in the City's best interest to retain Community Connection as a "renter" under the terms of a 5-year short-term lease.

NOW THEREFORE, BE IT RESOLVED that the City Council for the City of Thorne Bay hereby approves the renewal of a noncompetitive short-term lease, effective June 1, 2021 through May 31, 2026, for the rental of city owned lands located at 122 Freeman Drive, for the placement of a modular building that is used for operating a nonprofit human services organization.

PASSED AND APPROVED this 18th day of May 2021, by a duly constituted quorum of the City Council with a vote of ___ yeah and ____ nays.

ATTEST:

Cindy Edenfield, Mayor

Teri Feibel, CMC

This Rental Agreement is entered into by and between the City of Thorne Bay, Alaska, P.O. Box 110, Thorne Bay, Alaska 99919 (hereinafter called the "CITY" and, Community Connections, (hereinafter called the "RENTER").

Rented Premises. The City does hereby Rent to the Renter municipally owned property within the corporate boundaries of the City of Thorne Bay, located at 122 Freeman Drive, City Center Subdivision.

Municipal Code, Title 2, Article III, Incorporated. The provisions of "Title 2, Article III of the Thorne Bay Municipal Code shall apply to the terms of this Rental Agreement unless otherwise amended in this Rental Agreement.

1. **Term.** The term of this Rental Agreement shall be Five (5) year(s) beginning June 1, 2021 and ending May 31, 2026. Monthly rental payments due the City shall continue throughout the term of this Rental Agreement. Monthly Sales Taxes due the City shall commence upon the signing of Rental Agreement. Renter shall have the option to renew this Rent for an additional period of time subject to renegotiations of Rent terms and payments acceptable to both the City and Renter. The option to renew and Rent for the additional period can only be effective upon approval by the Thorne Bay City Council. This option to renew shall be exercised by the Renter in writing sixty (60) days prior to the expiration of the original Rent term. The option to renew is specifically waived if not exercised in full compliance with this provision.

This Rental Agreement expires automatically on the last day of the Five (5) year period absent the approval of a new Rental Agreement by the Thorne Bay City Council. Absent an approved Rental Agreement, the Renter shall vacate the premise on or before the ending date of this Rental Agreement.

In addition to any rights of the City to terminate this Rental Agreement as specified in this Rental Agreement, or as specified in the Thorne Bay Municipal Code, the City shall have all rights to terminate this Rental Agreement in accordance with any provision of applicable law.

2. **Monthly Rent Payment.** Renter covenants and agrees to pay City monthly Rent payments in the sum of **\$ determined by council (Expiring Lease Rate was Ten Dollars (\$10) per month)** plus applicable sales tax payable in advance on the first day of each month of the Rent term. In the event any payment required to be made pursuant to this Rental Agreement is more than ten (10) days past due, a late charge equal to ten percent (10%) per annum on such past due amount will be assessed and charged to Renter by City. At the expiration of five-year term the monthly Rent payment shall be reviewed and adjusted in accordance with the provisions of Section 2.56.210 of Title 2, Article III of the Thorne Bay Municipal Code.

3. **Deposits.** Renter shall deposit with the City an amount equal to N/A. Upon termination of the Rental Agreement the Renter shall vacate the premise leaving it in the same clean condition as presented at the time said Rental Agreement was initiated. If the premise is in need of cleaning, repairs or the Renter is in default in payments said deposit shall be used to offset such costs. In the event the Rented Premise is clean and in need of no repairs the deposit will be refunded in full. First and last month may be waived in lieu of improvements to the Rented Premises or other City Facilities as provided by Renter per "Exhibit A".

4. **Use.** Renter shall use the Rented Premises for the purposes of maintaining and operating there on, Placement of a modular building, additions and fences to be used for community service. The Rented Premises shall be used for no other purposes without the prior written consent of City.
5. **Utilities and Fees.** Renter shall be responsible for all utility accounts and applicable deposits for said accounts. Renter agrees to pay, and keep current, ALL charges, including deposits, for all utilities, including but not limited to water, sewer, refuse collection, electricity, propane, fuel oil and telephone. Failure to do so will result in the utility being shutoff. Activation of a city shutoff shall constitute a material breach of the Rent Agreement resulting in the City's termination of the Rent Agreement. Absent an approved Rental Agreement, the Renter shall vacate the premise immediately.
6. **Repairs, Maintenance and Compliance with Laws.** Renter shall maintain the Rented Premises at Renter's sole cost and expense and at all times keep the Rented Premises neat, clean and in a sanitary condition. Renter shall keep and use the Rented Premises in accordance with applicable laws, ordinances, rules, regulations and requirements of all governmental authorities. Renter shall permit no waste, damage or injury to the Rented Premises. Renter's use of the Rented Premises in violation of any law or regulation of any governmental entity related to public health or safety or environmental pollution shall be a material breach of the Rental Agreement and grounds for City's termination of the Rental Agreement. Renter is required to obtain building permit authorization from the City for construction of any and all structures placed on or in the Rented Premises.
7. **Signs, Alterations and Improvements.** All signs or symbols placed on or about the Rented Premises shall be subject to City's prior written approval. After prior written consent of City, Renter may make alterations and improvements to the Rented Premises, at Renter's sole cost and expense. City may elect to require Renter to remove any such alterations and improvements upon termination of this Rental Agreement at Renter's sole cost and expense. Any of Renter's improvements remaining on the Rented Premises longer than thirty (30) days after Renter's possessors rights to the Rented Premises have expired shall become Rented Premises of City.
8. **Insolvency.** In the event Renter becomes insolvent, bankrupt or if a receiver, assignee or other liquidating officer is appointed for the business of Renter, City, in City's sole discretion may immediately terminate this Rental Agreement and require that Renter vacate the Rental Premises.
9. **Subletting or Assignment.** Renter shall not sublet the whole or any part of the Rented Premises nor assign this Rental Agreement without the prior written consent of City. This Rental Agreement shall not be assignable by operation of law. All terms and conditions of the Rental Agreement shall be binding upon any sub Renter or assignee of this Rental Agreement and Renter shall remain fully responsible to City for performance of this Rental Agreement.

10. **Permits and Compliance with Law.** Renter shall obtain all necessary local, state and federal permits necessary for the operation of Renter’s business and shall comply with all local, state and federal laws, rules and regulations.

Failure to comply with any requirements of this section shall constitute a material breach of the Rental Agreement. Failure to remedy the violation within 30 days will result in the City’s termination of the Rental Agreement. Absent an approved Rental Agreement the Renter shall vacate the premise immediately.

11. **Insurance.** General Liability Insurance: The Renter shall procure and maintain during the life of this agreement, General Liability Insurance on an “occurrence basis” with limits of liability not less than \$1,000,000 per occurrence and /or aggregate combined single limit, personal injury, bodily injury and property damage.

Proof of Insurance shall be provided to City within thirty (30) days after the parties have executed this agreement and prior to public use of said premises. City shall be notified at least thirty (30) days before the cancellation or termination of any policy.

City shall be named as additional insured.

12. **Accidents and Liability.** City or its agent shall not be liable for any injury or damage to the persons or property sustained by Renter or others, in and about the Rented Premises.

13. **Indemnification and Waiver of Subrogation.** To the fullest extent permitted by law, the Renter agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, employees and volunteers against any and all liabilities, claims, demands, lawsuits, or losses, including costs and attorney fees incurred in defense thereof, arising out of or in any way connected or associated with this agreement.

To the extent permitted by law, the Renter hereby re-Rents the City, its elected and appointed officials, employees and volunteers from any and all liability or responsibility to the Renter or anyone claiming through or under the Renter by way of subrogation or otherwise, for any loss or damage to the property caused by fire or any other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the City, its elected or appointed officials, employees or volunteers. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of the Renter’s occupancy or use.

Renter understands that the City accepts no responsibility whatsoever for loss of, or damage to Renter’s property.

14. **Removal of Renter’s Property and Repair of Rented Property.** All buildings, fixtures and equipment of whatsoever nature, that Renter shall have acquired and installed upon Rented premises, whether permanently affixed or otherwise, shall continue to be the property of the Renter and must be removed by the Renter at the expiration or termination of this Rental Agreement; and at its own expense, Renter shall repair any injury to Rented Premises resulting from such removal. Renter shall remove all buildings, fixtures, and equipment, and make all repairs, within thirty days of the date the Renter vacates Rented Premises. If the Renter fails to

remove its buildings, fixtures, and equipment, and fails to make the necessary repairs, the City may do so, and seek reimbursement from the Renter for the full amount of the repairs, without any deduction for the value of any buildings, fixtures, or equipment left on the premises by the Renter. If City determines that it is in City's best interest to acquire the improvements, it may negotiate to purchase Renter's buildings, fixtures, and equipment at a price equal to or less than fair market value.

15. **Taxes.** Renter shall be solely and fully responsible for the payment of all applicable federal, state, and Thorne Bay municipal taxes including all Monthly Sales Taxes due the City.
16. **Liens.** Renter shall maintain Rented Premises free of any and all liens. Renter will not permit any mechanics', laborers' or materialmen's liens to stand against the Rented Property or improvements for any labor or materials furnished to Renter or claimed to have been furnished to Renter, or to Renter's agents, contractors, or sub-Renters, in connection with work of any character performed or claimed to have been performed on Rented premises or improvements by or at the direction or sufferance of Renter; provided, however, Renter shall have the right to contest the validity or amount of any such lien or claimed lien, In the event of such contest, Renter shall give to the City such reasonable security as may be demanded by the City to insure payment of such lien or such claim of lien. Renter will immediately pay any judgment rendered with all proper costs and charges and shall have such lien re-Rented or judgment satisfied at Renter's own expense. Renter agrees to indemnify, hold harmless and to defend the City and Rented premises from such liens. Renter consents to the City's recording of and posting of a statutory notice of non-responsibility in accordance with Alaska Statute 34.35.065
17. **Default by Renter.** Each of the following shall be deemed a default by the Renter and a breach of the Rental Agreement:
 - (a) A failure to make payment of any installment, of rent or of any other sum herein specified to be paid by Renter, and Renter fails to cure such default within ten (10) days after receipt of a written notice has been received by Renter specifying such failure to make payment;
 - (b) Upon shut off of utilities;
 - (c) A default in the performance of any other covenant or condition on the part of the Renter to be performed for a period of thirty (30) days after receipt by Renter of a notice specifying the particular default or defaults;
 - (d) The filing of a petition by or against Renter for adjudication as a bankrupt, or for reorganization or arrangement within the meaning of the Bankruptcy Act;
 - (e) The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Renter or for the appointment of a receiver or trustee of Rented Premises of the Renter;
 - (f) The taking possession of Rented Premises of the Renter by any governmental officer of agency pursuant to statutory authority for the dissolution or liquidation of the Renter;
 - (g) The making by the Renter of an assignment for the benefit of creditors;
 - (h) Renter vacates or abandons the Rented Premises; and
 - (i) A failure that continues for five (5) days or more to have the City named as an additional insured as required under paragraph 18, and Renter fails to cure such default within ten

(10) days after receipt of a written notice has been received by Renter specifying such failure to name the City as an additional insured.

The specification of events constituting default by the Renter in this Section, are in addition to any defaults specified in the Thorne Bay Municipal Code.

18. **City's Remedies for Default.** In the event of any default of the Renter, the City shall have the following rights and remedies – all in addition to any rights or remedies that may be given to the City by statute, common law, or under Thorne Bay Municipal Code.

- (a) Distraint for rent due and subsequent sale of chattels so distrained. The sale of any such chattels shall be in accordance with the procedure set forth in Alaska Statutes.
- (b) Re-enter Rented Premises and take possession thereof, remove all persons therefrom, and remove Renter's property therefrom and store it in a public warehouse or elsewhere at the cost of Renter, all without service of notice or resort to legal process (all of which Renter expressly waives) and without becoming liable for trespass, forcible entry, detainer, or other tort or for any loss or damage which may be occasioned thereby;
- (c) Declare the Term ended;
- (d) Re-let Rented premises in whole or in part for any period equal to or greater, or less, than the remainder of the Term for any sum which is commercially reasonable;
- (e) Cure any such default, if possible, and demand immediate payment until all costs incurred in curing the default have been reimbursed fully, together with interest calculated at the rate of ten percent (10%) per annum at the then current prime rate as established by the First Bank of Alaska;
- (f) Collect all reasonable damages, costs and expenses that the City may incur by reason of default by Renter, together with interest calculated at the rate of ten percent (10%) per annum at the then current prime rate as established by the First Bank of Alaska.
- (g) The City shall use reasonable diligence to relet Rented Premises in or to mitigate the City's damages, consistent with the uses of Rented Premises, and all applicable Thorne Bay code provisions related to this Rent and Rented Premises.

19. **Rights and Remedies.** Except insofar as this is inconsistent with or contrary to any provision of this Rent, no right or remedy herein conferred upon reserved to the City or Renter is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

20. **Waiver.** Except to the extent that a party may have otherwise agreed in writing, no waiver by a party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by a party to seek a remedy for any breach of the other party be deemed a waiver of its rights or remedies with respect to such breach.

21. **Changes.** No modifications, amendments, deletions, additions or alterations of the Rent Agreement shall be effective unless in writing and signed by all of the parties hereto and such representatives of the parties as have been duly authorized to make such changes.
22. **Joint Product.** The language set out in this Rental Agreement represents the joint product of the parties and shall not be construed against one party in favor of the other. Each party hereto has had the option of seeking the advice of legal counsel in the drafting of this Rental Agreement, and the rule of construction favoring construction against the drafter shall not apply. Renter acknowledges and agrees that Renter has not received any legal advice from the City's attorney or from anyone associated with the City.
23. **Authority.** The parties and their undersigned representatives warrant that they have full authority to enter into this Rental Agreement and to execute this Rental Agreement.
24. **Hazardous Materials.** The Renter shall not permit, store, manufacture or dispose on Rented Premises any hazardous material or controlled substance as determined by federal, state, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to , the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.), the Hazardous materials Transportation Act (42 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C.7401 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. 651et seq.), and Title 46 of the Alaska Statutes as these laws have been and may hereafter be amended or supplemented. "Hazardous Substance" means any pollutant, contaminant, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCB's or any other substance the removal of which is required, or the manufacture, preparation production, generation, use maintenance, treatment, storage, transfer, handling or ownership of which is restricted , prohibited, regulated or penalized by any and all federal, state, or municipal statutes or laws now or at any time hereafter in effect. Hazardous material shall not include cleaning supplies used in the routine daily cleaning and operation of a restaurant.
25. **Acceptance of the Rented Property by Renter.** Renter acknowledges that it has thoroughly examined Rented Premises. Renter accepts Rented Premises in their "AS IS" condition, and the City shall not be required to perform any work to prepare Rented Premises for the Renter. Renter's taking possession of Rented Premises shall be conclusive evidence against it that, at the time possession was taken, Rented Premises were in good and satisfactory condition. Renter acknowledges that, except for those representations and statements regarding the condition of Rented Premises expressly stated herein, Renter has not relied upon any representations or statements of the City or its representatives or agents regarding the condition of Rented premises or their suitability for Renter's uses under this Rent.
26. **Attorneys' Fees and Costs.** Should any dispute and/or legal action arise by reason of any default or breach on the part of Renter in the performance of any of the provisions of the Rental Agreement, Renter agrees to pay all reasonable attorneys' fees and costs incurred by

City in connection therewith including City's attorneys' fees and costs incurred on appeal. It is agreed that the venue of any legal action brought under the terms of this Rental Agreement will be the First Judicial District, at Ketchikan, Alaska. Renter specifically agrees that venue for trial in any action related to this Rent shall be in Craig, Alaska.

27. **No Waiver of Covenants.** Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future or similar breach. This Rental Agreement contains all the agreements between the parties, and there shall be no modification of the agreements contained herein except by written instrument signed by both parties

28. **Surrender of Rented Premises.** Upon termination of this Rental Agreement, Renter agrees to peacefully quit and surrender the Rented premises without notice, remove all of Renter's personal property and leave the Rented premises neat and clean. If City elects to require Renter to remove any alterations or improvements made by Renter, then Renter shall restore the Rented Premises to their previous condition, at Renter's sole expense.

29. **Binding on Heirs, Successors and Assigns.** The covenants and agreements of this Rental Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of both parties thereto, except as hereinabove provided, and as allowable by law.

Notice. Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to City at P.O. Box 19110, Thorne Bay, Alaska 99919, or the Renter at, 721 Stedman Street, Ketchikan, AK 99901, or at such other address as either party may designate in writing to the other.

30. **City's Right of Entry.** The City shall have the right to enter Rented premises at all reasonable times to examine the condition of same.

IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement as of the date first set above written.

CITY:

RENTER:

THE CITY OF THORNE BAY

COMMUNITY CONNECTIONS

By _____
Cindy Edenfield, Mayor "City"

By _____
Community Connections "Renter"

ATTEST:

Teri Feibel, City Clerk



CITY OF THORNE BAY
RESOLUTION 21-05-18-02

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, AUTHORIZING THE DONATION OF \$1,000.00 TO THE PRINCE OF WALES VOCATIONAL & TECHNICAL EDUCATION CENTER

WHEREAS, the City Council is the governing body for the City of Thorne Bay, Alaska; and

WHEREAS, the Prince of Wales Vocational & Technical Education Center is a Non-Profit Educational Center that serves the many communities on Prince of Wales Island; and

WHEREAS, the Prince of Wales Vocational & Technical Education Center (POW VOCTEC) Facility was constructed in 2014, and has been operating as an educational 501 (c)3, and managed by a Board of Directors that includes representatives from the Island communities, four tribal governments, four school districts, the USFS, POW Health Network, SEARHC, the Chamber of Commerce, and at large members; and

WHEREAS, the mission of POW VOCTEC is to address the career preparation, employment and training needs of residents on Prince of Wales Island, through the establishment and operation of a regionally serving vocational and technical learning center, offering space for vocational training programs such as welding, woodworking, construction, and automotive care. It also has classrooms for traditional learning environments as well as distance learning; and

WHEREAS, due to the Covid-19 outbreak, POW VOCTEC along with many other businesses experienced extreme loss of revenue and needs donations to assist with the continued daily operations of the facility for the POW residents.

NOW THEREFORE BE IT RESOLVED that the City Council for the City of Thorne Bay, Alaska, authorizes the donation of \$1,000.00 from the City Council Donation Budget, for the purposes of supporting the continued operations of the Prince of Wales Vocational & Technical Education Center.

PASSED AND APPROVED May 18, 2021

Cindy Edenfield, Mayor

ATTEST:

Teri Feibel, City Clerk

[Sponsored: Mayor Cindy Edenfield]



CITY OF THORNE BAY
ORDINANCE 21-06-01-01

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA,
AMENDING TITLE 2 – ADMINISTRATION AND PERSONNEL ADDING, CHAPTERS 2.06-
CONFLICT OF INTEREST & 2.07 – CODE OF ETHICS

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY ALASKA

- Section 1.** **Classification.** This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.
- Section 2.** **Severability.** If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.
- Section 3.** **Amendment to Code.** Title 2 – Administration and Personnel, is hereby amended by adding Chapter 2.06-Conflicts of Interest, Sections 2.06.010-130 which shall read as written on pages 2 through 8 of this ordinance. And Chapter 2.07-Code of Ethics, Sections 2.07.010-040, which shall read as written on pages 9-14 of this ordinance.
- Section 4.** **Adoption.** The Chapter and Sections of 2.06.010-130 and 2.07.010-.040, are hereby adopted and added to the Thorne Bay Municipal Code.
- Section 5.** **Effective Date.** This ordinance shall become effective upon adoption.

PASSED AND APPROVED this 1st day of June 2021, by a duly constituted quorum of the City Council with a vote of ____ Yeas and ____ Nays.

ATTEST:

Cindy Edenfield, Mayor

Teri Feibel, CMC

[Sponsor: Mayor Cindy Edenfield & Councilman Greg Kerkof]
[Introduction Hearing: May 18, 2021]
[Public Hearing: June 1, 2021]

2.06 CONFLICTS OF INTEREST

2.06.005 Declaration of policy.

It is declared that high moral and ethical standards among municipal officers are essential to the conduct of free government; and that the council believes that a code of ethics for the guidance of municipal officers will encourage those officers to avoid acting upon substantial personal interests or substantial financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this municipality in their municipal officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require municipal officers to adhere to a code of ethics.

2.06.008 Scope of code.

- A. The council affirms that each municipal officer holds office as a public trust, and any effort to benefit a substantial personal interest or a substantial financial interest through official action is a violation of that trust. The public trust and this chapter do not prohibit an officer from following independent pursuits, so long as those pursuits do not interfere with the full and faithful discharge of an officer's public duties. The council further recognizes that:
 - 1) In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be entirely without personal and financial interests in the decisions and policies of government;
 - 2) Citizens who serve as municipal officers retain their rights to interests of a personal or financial nature; and
 - 3) Standards of ethical conduct for municipal officers need to distinguish between those inconsequential conflicts which are unavoidable in a free society, and those which are substantial and material.
- B. There is no violation of this Code if, as to a specific matter, a municipal officer's:
 - 1) Personal or financial interest in the matter is insignificant; or of a type that is possessed generally by the public or a large class of persons to which the municipal officer belongs;
 - 2) Action or influence would have an insignificant or conjectural effect on the matter; or
 - 3) Action consists of voting in favor of introduction of an ordinance.
- C. The City attorney, hearing officers, and hearing agencies shall be guided by this section when issuing opinions and reaching decisions.

2.06.010 Misuse of official position.

- A. A municipal officer may not use, or attempt to use, an official position in order to gain a benefit, and may not intentionally secure for, or grant to, any person unwarranted benefits, treatment or advantage.
- B. A municipal officer may not:
 - 1) Seek other employment or contracts through the use or attempted use of the powers of official position;
 - 2) Accept, receive, or solicit compensation for the performance of official duties or

- responsibilities from a person other than the municipality;
- 3) Use municipal time, property, equipment, or other facilities with intent to secure a benefit;
 - 4) Take or withhold official action in order to affect a matter in which the municipal officer has a personal or financial interest;
 - 5) Attempt to affect a personal or financial interest through coercion of a subordinate; or
 - 6) Restrict, or threaten to restrict a contractor's eligibility or opportunity to contract with the city solely in order to secure an unwarranted advantage for the city or the officer.
- C. An councilmember, or member of any board or commission may not deliberate or vote on any matter in which he or she has a personal or financial interest.
- D. Violation of this section is a Class B misdemeanor.
- State law reference(s)—Conflict of interest, AS 29.20.010; misuse of official position, AS 39.52.120.

2.06.020 Gifts.

- A. No municipal officer shall, directly, or indirectly, solicit or accept any gift to the officer's benefit, whether in the form of money, service, loan, travel, entertainment, hospitality, promise, or otherwise under circumstances in which it could reasonably be inferred that the gift is intended to influence the officer in the performance of the officer's official duties or constitutes a reward for any official action by the officer.
 - B. Travel, even if intended to influence an officer, shall not be regarded as a gift to the officer's benefit if:
 - 1) The benefits to the public resulting from the travel clearly outweigh the detriment caused by the absence of the officer;
 - 2) The nature and extent of the transportation and hospitality provided to the officer are economical, businesslike and necessary;
 - 3) The officer is not eligible to take personal leave during the travel; and
 - 4) The officer submits a pre-travel request and post-travel report for approval by the body of which he or she is a member or, in the case of employees, the City administrator.
 - C. Any officer who accepts a gift having a value in excess of \$50.00 shall report such gift to the officer's supervisor if the officer may take or withhold action that affects the giver. The supervisor shall forward a copy of the report to the City attorney who shall maintain the report in a public file. As used in this section, "gift" includes any series of gifts from the same donor within any 12-month period, other than meals reciprocated by the officer.
 - D. Violation of this section is a Class B misdemeanor.
- State law reference(s)—Alaska Executive Branch Ethics Act, AS 39.52.010 et seq.

2.06.030 Improper use or disclosure of information.

- A. A municipal officer may not disclose or use information gained in the course of, or by

reason of, the officer's official duties for the purpose of affecting a personal or financial interest of the officer or the officer's immediate family. This section does not apply to information concerning programs or services available to the public or to municipal employees generally.

B. Violation of this section is a Class B misdemeanor.

2.06.040 Improper influence in municipal grants, contracts, leases, or loans.

- A. A municipal officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a municipal grant, contract, lease, or loan if the municipal officer or any person supervised by the municipal officer may take or withhold official action that affects the award, execution, or administration of the municipal grant, contract, lease, or loan.
- B. The prohibition in subsection (a) of this section does not apply to a municipal grant, contract, or lease which is competitively solicited, unless the officer:
 - 1) Is employed by the agency awarding the grant, contract, or lease, or is employed by the agency for which the grant, contract, or lease is let; or
 - 2) Takes official action with respect to the award, execution, or administration of the grant, contract, or lease.
- C. The prohibition in subsection (a) of this section does not apply to a municipal loan held by the officer or an immediate family member if:
 - 1) The municipal officer does not take or withhold official action that affects the award, execution, or administration of the loan;
 - 2) The loan is generally available to members of the public; and
 - 3) The loan is subject to fixed eligibility standards.
- D. Notwithstanding the provisions of subsection (b)(1) or (c)(1), a council member, or member of any board or commission may have a personal or financial interest in a municipal grant, contract, lease, or loan which is subject to action by the body on which the member serves, provided that the member does not take or attempt to influence official action with respect to the award, execution, or administration of the grant, contract, lease, or loan. As used in this section, "attempt to influence" does not include submission of a written bid or application conforming to standard requirements and available for public inspection and copying prior to award whether or not award is to the member.
- E. A municipal officer shall report in writing to the City attorney a personal or financial interest held by the officer in a municipal grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves.
- F. Violation of this section is a Class B misdemeanor.

2.06.050 Improper representation.

- A. A municipal officer may not represent, advise, or assist another person in any matter pending before the agency that the officer serves, if the representation, advice, or assistance is:
 - 1) For compensation, unless the representation, advice, assistance, and compensation

- are required by statute, regulation, or court rule; or
- 2) Without compensation, but rendered to affect a personal or financial interest of the municipal officer.
- B. This section does not prohibit activities related to collective bargaining.
- C. Violation of this section is a Class B misdemeanor.

2.06.060 Restrictions on employment after leaving municipal service.

- A. A municipal officer who leaves municipal service may not, for one year thereafter, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the agency served by the municipal officer and in which the officer participated personally and substantially through the exercise of official action. In this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of ordinances, resolutions and charter amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.
- B. Nothing in this section prohibits an agency from contracting with a former municipal officer to act on a matter on behalf of the municipality.
- C. The administrator may waive application of subsection (a) of this section upon the following conditions:
 - 1) The administrator shall determine that representation by a former public officer is not:
 - a) The result of malfeasance or coercion,
 - b) Based in whole or significant part upon knowledge by the officer of facts not available to the public upon demand,
 - c) For the purpose of representing, advising, or assisting a person regarding a matter for which the officer was solely or primarily responsible, or
 - d) Otherwise adverse to the public interest.
 - 2) The waiver shall apply only to representation, advice, or assistance to identified persons regarding identified matters and must be in writing.
 - 3) The waiver must be provided to the City attorney for approval or disapproval.
- D. Violation of this section is a Class B misdemeanor.

2.06.070 - Prohibited Conduct.

- A. Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial or vested personal interest:
 - 1) The official;
 - 2) A relative;
 - 3) An individual with whom the official resides; or
 - 4) An entity that the official serves as an officer, director, trustee, partner or employee.
 - 5) Officials shall abstain from participating in deliberations and decision-making where conflicts exist.
- B. Appearance of Conflict. If it could appear to a reasonable person, having knowledge of

the relevant circumstances, that the official's judgment is impaired because of either:

- 1) A personal or business relationship not covered under the foregoing subsection;
- or
- 2) A transaction or activity engaged in by the official;

The official shall disclose the facts giving rise to the appearance of a conflict before participating in the matter.

- C. Misuse of Public Position or Resources. Except for infrequent use at little or no cost to the City, officials shall not use public resources that are not available to the public in general, such as city staff time, equipment, supplies or facilities, for other than a city purpose.
- D. Representation of Third Parties. The members of the City Council shall not appear on behalf of the financial interest of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.
- E. Solicitations of Charitable Contributions. No official may make direct personal solicitations for charitable contributions from city employees.
- F. Gifts and Favors. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law.
- G. Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose. "Confidential information" means:
 - 1) Specific information, rather than generalized knowledge, that are not available to a person who files a public records request; and
 - 2) Information made confidential by law.

2.06.080 Aiding a violation prohibited.

- A. It is a violation of this chapter for a municipal officer to knowingly aid another person in a violation of this chapter.
- B. A violation of this section shall be the same class of offense as the violation aided.

2.06.085 Definitions.

A. For purposes of this section

"substantial financial interest" means a pecuniary or material benefit accruing to a councilmember or other officer or employee of the city, or family member of a councilmember or employee, as a result of a private, business or professional transaction with the city.

"Family member" means spouse, father, mother, brother, sister, child, stepchild, step-brother, step-sister or in-law. A councilmember or other officer, employee or family member shall be deemed to have a substantial financial interest in the affairs of:

- 1) A firm, partnership, association or governmental entity (other than the city) of which such councilmember, officer, employee or family member is a member or employee;
- 2) A corporation of which such officer, employee or family member is an officer, director or employee or in which he or she owns (either directly or beneficially) a controlling interest. The city council shall, by resolution, approve all transactions covered in this section. (Ord. 01-11-15-03 § 4(part), 2001: Ord. 90-08 § 5, 1990)

2.06.090 Disclosures of conflicts by municipal employees.

- A. A councilmember or employee of the city shall disqualify himself or herself from participating in any official action in which he or she has a substantial financial interest.
- B. A municipal employee who is involved in a matter that may result or has resulted in a violation of sections 2.06.010—2.06.080 shall:
 - 1) Refrain from taking any official action relating to the matter until a determination is made under this section; and
 - 2) Immediately disclose the matter in writing to the Mayor or Vice Mayor.

Upon receipt of the declaration the attorney shall proceed in accordance with section 2.06.145.

2.06.100 Disclosures of conflicts by municipal officers other than employees.

- A. A municipal officer other than an employee, who is involved in a matter that may result in a violation of sections 2.06.010—2.06.080 shall disclose the matter on the public record and ask to be excused from the discussion and official action on that matter.
- B. The presiding officer shall determine whether the member's involvement would violate sections 2.06.010—2.06.080.
- C. If the presiding officer determines that a violation would exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.
- D. The presiding officer's decision may be overridden by a majority vote of the body.

A City Council member or a member of any board or commission shall, whenever practical, request guidance, which may include a written advisory opinion, from the City Attorney when determining whether a member is involved in a matter that may result in a violation of sections 2.06.010—2.06.080.

2.06.110 Third party complaints of violations and potential violations.

Any person may file a complaint with the Mayor, under oath and in writing, of a violation or potential violation of sections 2.06.010—2.06.080 by a municipal officer. The Mayor shall provide a copy of the complaint to the City Attorney and the municipal officer.

2.06.120 City Attorney's advisory opinions.

- A. Upon the written request of The Mayor, City Administrator, or City Clerk, the City Attorney shall issue an advisory opinion interpreting this chapter. The requester shall supply any additional information requested by the City Attorney in order to issue the opinion.

- B. The City Attorney may offer oral advice if delay would cause substantial inconvenience or detriment to the requester. Within two working days after providing the oral advice, the City Attorney shall provide a brief written statement summarizing its contents.
- C. The City Attorney may reconsider, revoke, or modify an advisory opinion at any time.
- D. A request for advice made under subsection (a) of this section is confidential to the extent permitted by law unless the subject of the opinion waives confidentiality and authorizes in writing the release of the request or the full text of the advisory opinion.

2.06.130 Immunity.

A municipal officer or former municipal officer is not liable under this chapter for an action carried out in accordance with the advice of the City Attorney issued under section 2.06.120 if the officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice.

2.07 CODE OF ETHICS

2.07.010 - Policy:

- A. Purpose. The Thorne Bay City Council has adopted a Code of Ethics for members of the City Council to promote public confidence in the integrity of local government and its fair operation. This Code of Ethics will provide the basis for education and training for Council Members; both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.
- B. Intent. The citizens and businesses of Thorne Bay are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. The City Council is committed to upholding the City of Thorne Bay Core Values which state:
 - 1) We will provide excellent public service and ensure the safety and wellbeing of our community and one another through the empowerment of each employee. We value integrity, inclusiveness, stewardship and communication.
 - a. **Integrity:** We hold ourselves to the highest standard of professionalism and ethical conduct.
 - b. **Inclusiveness:** We embrace and value different perspectives as we work together for the common good.
 - c. **Stewardship:** We ensure the public's resources are used responsibly to provide the greatest benefit.
 - d. **Communication:** We will listen and engage in an open, honest and timely exchange of information.
 - 2) We are accountable to our community for innovation and collaborative efforts that anticipate needs, leverage resources and deliver solutions.
- C. In keeping with the City of Thorne Bay's commitment to excellence, the effective functioning of democratic government therefore requires that:
 - 1) Public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
 - 2) Public officials be independent, impartial and fair in their judgment and actions;
 - 3) Public office be used for the public good, not for personal gain; and
 - 4) Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

2.07.020 - Ethical Standards.

In addition to Section 2.07.010 of the Code of Ethics, which shall be administered by the Ethics' Officer, officials are also required to comply with the following standards:

- A. **Compliance with Other Laws.** Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include, but are not limited to:
 - 1) the United States and Alaska Constitutions;
 - 2) laws pertaining to conflicts of interest,
 - 3) election campaigns,
 - 4) financial disclosures and open processes of government; and
 - 5) city ordinances and policies.
- B. No official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any city employee.

- C. No official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.
- D. **Working for the Common Good.** Recognizing that stewardship of the public interest must be their primary concern, officials will work for the common good of the people of Thorne Bay and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the City Council. Officials need to be mindful that making special requests of staff - even when the response does not benefit the official personally - puts staff in an awkward position. Questions for city staff members shall be submitted to the City Administrator who will then coordinate with staff to provide a response.
- E. **Respect for Process.** Officials shall perform their duties in accordance with the processes and rules of order established by the City Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by city staff.
- F. **Commitment to Transparency.** Transparency, openness, and accountability are fundamental values of the City and are also required by the laws of the state of Alaska. The public has a right to inspect public records unless exempt by law or privacy policies from disclosure. All materials relating to the conduct of city government that are prepared, possessed, used or retained by any official, including email, text messages and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from city staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the city public records officer (the city clerk), who has responsibility to ensure that the City complies with the record retention schedules. Officials shall promptly provide any records requested by the public records officer in response to a disclosure request under the Public Records Act. It is the responsibility of the public records officer, together with the city attorney, to decide which records meet the definition of "public record" and whether or not they are exempt from disclosure; officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.
- G. **Conduct of Public Meetings.** Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.
- H. **Decisions Based on Merit.** Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
- I. **Ex Parte Communications.** In quasi-judicial matters, officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

- J. **Attendance.** Attendance at regular council meetings by Council Members is required absent being excused per 2.04.100. A Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council.
- K. **Nepotism.** A Council Member may not vote or participate in the interview or appointment of a relative to boards or commissions or other appointed positions.
- L. **Advocacy.** When acting in an official capacity as a city official representing the City, officials shall represent the official policies or positions of the City Council, to the best of their ability when the City Council, has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Thorne Bay, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during council meetings, board/commission meetings, or other official city meetings.
- M. **Policy Role of Officials.** Officials shall respect and adhere to the Strong Mayor structure of Thorne Bay city government. Except as provided by state law, officials shall not interfere with the administrative functions of the City or the professional duties of city staff; nor shall they impair the ability of staff to implement Council policy decisions.

2.07.30 - Ethics Officer

The City Attorney shall serve as the Ethics' Officer for the City of Thorne Bay. The Ethics' Officer will interpret and apply the council code of ethics to complaints submitted to the Officer. The Ethics' Officer, in addition to other duties, may recommend changes or additions to this Council Code of Ethics to the City Council.

2.07.040 - Complaints, Investigations, Hearings and Enforcement:

The Ethics Officer may resolve inadvertent and minor violations of the Code of Ethics informally, unless the Ethics' Officer determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the Ethics' Officer shall initiate an action in accordance with this section.

A. Complaint Process.

- 1) **Complaint Requirements - Service.** Two officials are required to sign off on a written complaint before it can be filed with the Ethics' Officer alleging one or more violations of this Code of Ethics by an official. The complaint must set forth specific facts with enough precision and detail for the Ethics' Officer to make a determination of sufficiency. The complaint shall be filed with the city clerk who will date-stamp it as received and forward it to the Ethics Officer.
- 2) **Finding of Sufficiency.** The Ethics Officer shall make a determination of sufficiency within 30 days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section 2.06.030 or 2.06.040 of this Code. The Ethics Officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the Ethics Officer shall investigate the complaint as set forth below.

- 3) **Dismissal.** The Ethics Officer shall dismiss the complaint if the Ethics Officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct. A decision for dismissal as noted above is final and not reviewable.
- 4) **Notice.** Notice of action by the Ethics Officer shall be provided as follows:
 - a) **Notice of a finding** of insufficiency or dismissal of a complaint by the Ethics Officer shall be sent to the officials who made the complaint and the official complained against within seven days of the decision by the Ethics Officer. A finding of insufficiency or dismissal of a complaint by the Ethics Officer is final and binding, and no administrative or other legal appeal is available through the Ethics Officer.
 - b) Within seven days of the Ethics Officer rendering a finding of sufficiency, the city clerk shall send notice to the officials who made the complaint and the official complained against, of the Ethics Officer's determination. If, after investigation, the Ethics Officer has reason to believe that a material violation of Section 2.06.030 or 2.06.040 has occurred, the city clerk shall give notice of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least 30 days prior to the date set for the hearing. The following must be submitted to the Ethics Officer via the City Clerk at least fifteen days prior to the scheduled hearing:
 - i. Written response to the assertions in the complaint by the accused;
 - ii. Any motions by the accused asserting Procedural or Technical challenges to the complaint;
 - iii. Witness list including contact information (Name, Address, and Telephone number).

If at any point in the process, a recall petition is filed based on substantially the same charges as the ethics complaint as determined by the Ethics Officer, the process will be stayed until final resolution of the recall petition.

- 5) **Stipulations.** At any time after a complaint has been filed with the Ethics Officer, the Ethics Officer may seek and make recommendations that the City Council enter into a stipulation with the official complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the Ethics Officer thinks a stipulation is appropriate, an admission of the violation by the official complained against, a promise by the official complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the officials who made the complaint and the official complained against and forwarded to the City Council for action.

B. Conduct of Hearings.

- 1) All hearings on complaints found to be sufficient shall be conducted by the Ethics Officer and are open to the public. The official who is the subject of the complaint may appear at the hearing with or without counsel and may call witnesses and cross examine witnesses. The hearing shall be informal, meaning that the Ethics Officer shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Ethics Officer may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the Ethics Officer shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the Ethics Officer. The Ethics Officer may adjourn the

hearing from time to time to allow for the orderly presentation of evidence. The Ethics Officer shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided, that the Ethics Officer shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

- 2) Within 30 days after the conclusion of the hearing, the Ethics Officer shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the officials who made the complaint and to the official complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the City Council.

C. **City Council Action.** Final City Council action to decide upon stipulations and recommendations from the Ethics Officer or findings, conclusions, and recommendations from the Ethics Officer shall be by majority vote in a public meeting. Deliberations by the Council may be in executive session. The member of the Council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving him or herself. However, upon request of the member of the Council against whom the complaint was made, a public meeting before the Council will be held on the issue of penalties.

D. **Disposition.** In the event the Ethics Officer finds that the person against whom the complaint was made has violated the Code of Ethics, then the City Council may take any of the following actions by a majority vote of the Council. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in subsection (5) of this section.

- 1) **Dismissal.** Dismissal of the complaint without penalties.
- 2) **Referral.** A complaint may be referred to another agency with jurisdiction over the violation, such as the Public Disclosure Commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.
- 3) **Admonition.** An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the mayor pro-tem or his/her designee, to the official.
- 4) **Reprimand.** A reprimand shall be administered to the official by a motion of reprimand by the majority of the City Council.
- 5) **Censure.** A resolution of censure shall be a resolution read to the person in public. The resolution shall be prepared by the City Council and shall be signed by the mayor, or if the complaint is against the mayor, the mayor pro-tem. The person shall appear at a City Council meeting at a time and place directed by the City Council to receive the resolution of censure. Notice shall be given at least 20 calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the official appears as required.

- 6) **Civil Penalties.** The City Council may assess a civil penalty of up to one thousand dollars or three times the economic value of anything received in violation of this Code of Ethics or three times the economic value of any loss to the City, whichever is greater. Any monetary penalty assessed civilly shall be placed in the City's general fund. The City Council may also suspend a portion of a civil penalty imposed on condition the Council Member have no other violations of the Council Code of Ethics for one year.
- 7) **Other Penalties.** The City Council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the city for any regional or multijurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the City Council.
- E. **Review of Civil Penalties.** If the City Council orders an official to pay a civil penalty, the official may seek a writ of review from the superior court pursuant to Chapter 7.16 RCW, within 30 days of the City Council's order.
- F. **Protection Against Retaliation.** Neither the City nor any official may take or threaten to take, directly or indirectly, official or personal action, including, but not limited to, discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any council member because that council member files a complaint with the Ethics Officer.
- G. **Public Records.** Records filed with the Ethics Officer become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests, identity information must be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the Ethics Officer determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS' OFFICER. THE ETHICS' OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE ETHICS' OFFICER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.
- H. The City shall release copies of any written reports resulting from an investigation of a sustained complaint, any Ethics' Officer Orders, and any written censures or reprimands issued by the City Council, in response to public records requests consistent with applicable public disclosure laws.
- I. **Liberal Construction - Limitation Period - Effective Date.**
 - 1) This Code of Ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.
 - 2) Any action taken under this Code of Ethics must be commenced within two years from the date of violation.