

CITY OF LANGLEY, WASHINGTON

ORDINANCE NO. 1019

AN ORDINANCE OF THE CITY OF LANGLEY, WASHINGTON, Amending Langley Municipal Code Chapter 1.24 Ethical Conduct and Ordinance Nos. 994, 998B, & 1000.

WHEREAS, the City Council, finds the proposed amendment is in the best interests of the City and the public;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANGLEY WASHINGTON, DO ORDAIN as follows:

Section 1. Langley Municipal Code Chapter 1.24 is hereby amended to read as follows:

**Chapter 1.24
ETHICAL CONDUCT**

Sections:

- 1.24.010 Purpose.**
- 1.24.020 Definitions.**
- 1.24.030 Prescribed conduct.**
- 1.24.040 Administrative provisions.**
- 1.24.050 Review of ethics training and advisory board.**

1.24.010 Purpose.

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

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

The purposes of this code of ethics are:

- A. To establish standards of ethical conduct – especially those dealing with conflicts between personal interests and those of the city – for Langley officials, employees and consultants and those who do business with the city;

- B. To provide clear guidance with respect to such standards by clarifying which acts are allowed and which are not;
- C. To promote public confidence in the integrity of Langley's governance and administration;
- D. To provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government; and
- E. To provide for the fair and effective administration and enforcement of this code.

This code is enacted pursuant to RCW [35A.11.020](#) and is not intended to authorize any conduct prohibited by Chapters [42.23](#) (Code of Ethics for Municipal Officers – Contract Interests), [42.52](#) (Ethics in Public Service), and [42.36](#) RCW (Appearance of Fairness Doctrine) and RCW [42.41.050](#) (Local Government Employee Whistleblower Protection Act). In the event of conflict between this code and any applicable state or federal laws and regulations, the stricter interpretation is to be applied. (Ord. 1000 § 1, 2014; Ord. 998B § 1, 2014; Ord. 994 § 1 (Exh. A), 2013)

1.24.020 Definitions.

“Board” means the ethics training and advisory board.

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

“Confidential information” means any information which the city of Langley is entitled by law and has determined to keep confidential, subject to the provisions of the Public Records Act (Chapter [42.56](#) RCW), the Open Public Meetings Act (Chapter [42.30](#) RCW), or other applicable state or federal government law or rule.

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

“Customer” or “client” means any person or entity that has been supplied goods or services during the previous 12 months by either the official, employee or consultant or his or her outside employer or business; provided, that his or her position in the outside employer or business is such that he or she can reasonably be expected to have knowledge of or influence over the transaction.

“Domestic partner” means an adult, who is not married to or in a civil union with an official, employee or consultant but who lives with him or her and shares a common domestic life.

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

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

“Family” means the spouse, child or stepchild, brother or sister, parent or stepparent, niece or nephew, uncle or aunt, and grandparent or grandchild of an official, employee or consultant or their spouse. “Family” includes a domestic partner and any person claimed as a dependent on their latest federal income tax return.

“Financial benefit” means any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. Financial interest is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result. Financial benefit does not include a campaign contribution to a candidate not exceeding \$100.00 to that candidate in any election cycle.

“Gift” means anything of over \$100.00 in value that any person transfers to an official, employee or consultant on any basis other than a legal obligation to do so. It includes, but is not limited to, cash, gifts sent to a home, paid outings, paid travel, tickets to concerts and sporting events, and any other forms of gifts, gratuities, honoraria or favors.

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

“Official(s)” means elected officials and any other official of the city other than an employee or consultant, whether paid or unpaid and whether temporary or permanent. It includes all the members of every city entity including volunteers.

“Outside employer or business” means a corporation, partnership, sole proprietorship, or other employer other than the city, whether for profit or nonprofit, public sector or private sector, to which an official, employee or consultant is related in one or more of the following ways: (1) he or she receives compensation, whether actual or deferred, for services rendered or goods sold or produced, and (2) he or she has an ownership interest, whether direct or indirect including options or contingent rights of any kind excluding, in the case of a public corporation, an ownership interest of less than one percent of the outstanding stock.

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

“Person” means any individual, corporation, firm, association or other form of business association, regardless of status as for profit or nonprofit.

“Personal benefit” means benefits other than those that are directly financially advantageous. A “personal interest” means a relationship to something such that a personal benefit has been, will be, or might be obtained by certain action or inaction with respect to it.

“Related party” means, in relation to an official, employee or consultant, the following persons:

1. A member of his or her family;
2. Any person with whom he or she has a regular and close personal relationship;
3. Any person with whom he or she has a financial or business relationship, including but not limited to:
 - a. An outside employer or business of his or hers, or of his or her spouse or domestic partner;
 - b. An employee of his or her outside employer or business;
 - c. A customer or client of his or her outside employer or business; or
 - d. A debtor or creditor of himself or herself, or of his or her spouse or domestic partner;
4. A person or entity from whom an elected official has received an election campaign contribution during the past election cycle, either directly or indirectly through a campaign committee of any kind, that in the aggregate exceeds \$100.00. For the purpose of this clause, donations from a person or entity include donations from any related family member or business;
5. A nongovernmental civic group, union, social, charitable, or religious organization of which he or she or his or her spouse or domestic partner is an officer or director.

“Retaliatory action” means:

1. Any adverse change in a city employee’s employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand, 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 an employee that are condoned or encouraged by a supervisor or senior manager or official. (Ord. 1000 § 1, 2014; Ord. 998B § 1, 2014; Ord. 994 § 1 (Exh. A), 2013)

1.24.030 Prescribed conduct.

A. Conflicts of Interest. Officials, employees and consultants shall avoid actual or apparent conflicts of interest. These arise when they use their official position or office to take or fail to take any action, or influence others to take or fail to take any action, in a manner which they know, or have reason to believe, will result in a personal or financial benefit to himself or herself or to a related party as distinct from general benefits that are shared with all or a substantial segment of the city's population. The performance of purely ministerial acts does not give rise to conflicts of interest. Specific instances of the conduct required in relation to common examples of conflicts of interest are set out in subsections (B) through (H) of this section.

B. Gifts.

1. An official, employee or consultant and his or her spouse or domestic partner shall not, directly or indirectly, solicit or accept a gift from any person or entity that has any of the following relationships with a city entity where he or she is in a position to exert any influence:

- a. Has sought a financial benefit from the city entity within the past 12 months;
- b. Is currently seeking a financial benefit from the city entity; or
- c. Seeks a financial benefit from the city entity within 12 months of the date of a

gift.

2. A person or entity may not give or seek to give a gift to any official, employee or consultant or to his or her spouse or domestic partner who is in a position to exert any influence over a city entity with which they have any of the following relationships:

- a. Have sought a financial benefit from the city entity within the past 12 months;
- b. Is currently seeking a financial benefit from the city entity; or
- c. Seeks a financial benefit from the city entity within 12 months of the date of a

gift.

3. This section is not intended to prohibit officials, employees or consultants from exchanging minor gifts with their personal friends or family in the course of ordinary social interaction; provided, that those persons do not have business before the city, or their business is with a city entity where the official, employee or consultant is not advising on or participating in the decision-making process, or has previously withdrawn from participation in the matter.

4. This section is not intended to prevent any person from making gifts of property, money, or services to the city as a whole; provided, that such gifts are unconditional in nature and further provided that gifts to the city valued in excess of \$100.00 must be approved by the city council.

C. Use of Public Resources.

1. An official, employee or consultant shall not use or lend, or permit others to use or lend, any city funds, property, or staff for the personal or financial benefit of himself or herself or of a related party. This includes, but is not limited to, city funds, office space, supplies, stationery, postage, telephones, equipment and vehicles. It also includes the use of travel and other expense reimbursements for anything other than official business.

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

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

D. Representation of Private Interests.

1. An official, employee or consultant shall not represent any private interests in matters before the city or in matters before other entities but against the city's interests. An official, employee or consultant shall only appear before a city entity on his or her own behalf or on behalf of the city. If he or she appears before the meeting of any city entity as a private citizen, and not in an official capacity, he or she must comply with Section [1.24.040\(B\)](#). If he or she writes a letter to the editor or other publicly distributed writing, he or she is required to disclose that he or she is acting only as a private citizen, unless

authorized by the mayor to act on behalf of the city. If the speech or writing is in response to criticism or other communication directed at or regarding his or her official role, the official, employee or consultant shall respond only in his or her official role.

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

3. Unpaid volunteer members of a city entity may represent persons and entities before, and appear before, any city entity other than their own, subject to compliance with Section [1.24.040\(B\)](#).

E. Future Employment.

1. For a period of 12 months after leaving his or her city service or employment, an official or employee shall not act as agent, attorney, lobbyist, or other sort of representative, on behalf of any other person, for compensation, to or before his or her former city entity. For the purposes of this provision, a mayor, city administrator or council member is deemed to have worked for every city entity. This includes action by a partner, associate, and other professional employee of an entity in which the former official or employee is a partner, associate, or professional employee.

2. An official or employee shall not accept compensated employment, full time or part time, for a period of 12 months after leaving his or her city service or employment, with any of the following:

a. A party to a contract with the city, when he or she participated personally and substantially in the preparation, negotiation, or award of the contract;

b. An individual or entity who has, within the previous year, benefited directly from any decision made by, or based on advice or information supplied by, the official or employee or by a subordinate, other than information related to purely ministerial acts.

3. Former officials or employees are not prohibited from such compensated employment in the following cases:

a. They are working for the city on a volunteer basis;

b. They are acting on behalf of another federal, state, or local government;

c. They are giving uncompensated testimony under oath;

d. They are providing scientific or technological information at the government's request; or

e. They performed only ministerial acts.

F. Use of City Information. An official, employee or consultant shall not make use of information acquired through his or her official position for the personal or financial benefit of himself or herself or of a related party. This includes the following:

1. The disclosure or use of confidential information; and

2. The refusal to disclose, or any obstruction of the disclosure of, information which the city is required to disclose pursuant to its own laws and rules or those of any state or federal government.

G. Nepotism. Officials, employees or consultants shall not, on behalf of the city, undertake any of the following activities in relation to any person who is a member of his or her family:

1. Hire or change the conditions of employment of the person; this includes attempting to influence such decisions;

2. Act in a direct supervisory role over the employment of the person;

3. Award or attempt to influence the award of a contract to the person; and

4. Grant a license or permit or take any other discretionary administrative decision affecting the person; this includes making recommendations or exerting any other form of influence regarding the decisions of any city entity.

H. Harassment.

1. An official, employee or consultant shall not use their position to harass, intimidate or discriminate against any co-worker or member of the public based upon a person's sex, sexual identity, race, nationality, age, appearance, or religious beliefs.

2. It is a violation of this code for an official or employee to fail to investigate in a timely, objective and diligent manner any complaints of harassment that may have been reported to him or her,

unless he or she has promptly and in writing referred such complaints to a more appropriate investigatory body.

3. No official or employee shall take any kind of retaliatory action against any employee because that employee has made a complaint of harassment. (Ord. 1000 § 1, 2014; Ord. 998B § 1, 2014; Ord. 994 § 1 (Exh. A), 2013)

1.24.040 Administrative provisions.

A. Ethics Training and Advisory Board.

1. An ethics training and advisory board of ~~not less than~~ **three to** five members, appointed by the mayor and confirmed by the city council, is hereby created. Each member shall serve for a three-year term which shall be staggered so that at least one member is appointed each year. A simple majority of the members of the board shall constitute a quorum.

2. All members of the board shall have their primary residence on Whidbey Island south of Classic Road and a majority shall be residents of the city of Langley. No member of the board shall be an official, employee or consultant of the city in any other capacity. Board members shall not receive any remuneration from the city but may be entitled to reimbursement of out-of-pocket expenses on the same basis as volunteer members of other city agencies.

3. The functions of the board shall be to:

a. Provide an ethics orientation and training program for officials related to this ethics code;

b. To the extent requested by the mayor, provide such educational and training resources as may be necessary so that employees and consultants understand their responsibilities and required conduct under this ethics code;

c. Provide advisory opinions about the application of the code at the request of officials, employees or consultants;

d. Review complaints and recommend to the mayor or city council as appropriate for final action any remedies that may be required; and

e. Maintain records of all advisory opinions, reviews and recommendations, and prepare an annual report to city council on its activities including recommendations for any changes to this code.

B. Declaration of and Management of Conflicts of Interest.

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

2. Officials who have disclosed a conflict of interest that may result in a personal or financial benefit for themselves or a related party shall withdraw from the meeting for the duration of the discussion of the issue that has given rise to the conflict of interest.

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

a. Another member of a city entity,

b. A party to the current matter, or

c. Anyone else who may be affected by a decision relating to the matter.

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

a. A vote of the unchallenged members of a city entity where he or she is a member of, or scheduled to appear before, the entity;

b. A vote of the unchallenged members of the city council where a council member is the person who is requested to withdraw;

c. A vote of the city council where the mayor is the person who is requested to withdraw; or

d. A decision of the mayor in all other cases.

5. If withdrawal as a result of a declaration of a conflict of interest or of a challenge and request for withdrawal results in the lack of a quorum or the failure to obtain a majority vote in a city entity, the situation will be resolved as follows:

a. In the case of the city council, a member who is conflicted shall be permitted to fully participate in the proceeding and vote as though they were not conflicted; provided, that the basis for their conflict and potential disqualification is publicly disclosed; and

b. In the case of all other city entities, by one of the following:

(1) The postponement of a decision until a sufficient number of nonconflicted members can attend or the mayor appoints additional nonconflicted members; or

(2) The replacement of the conflicted member by an alternate member if available.

6. Employees and consultants, who are in positions requiring judgment and discretionary decision-making and who experience a conflict of interest in a matter before them, shall report that conflict of interest to their supervisor immediately, in writing, and shall not take any action on the matter. The supervisor shall make arrangements for another employee or consultant to address the matter at hand. The employee or consultant with the conflict of interest shall not provide information, hold conversations, participate in meetings or portions of meetings about the matter or in any way participate in its resolution.

7. An official, employee or consultant who has withdrawn or has been required to withdraw from a matter shall not be replaced by a related party or by any other official, employee or consultant over whom he or she is in a position to exercise any supervisory authority.

C. Advisory Opinions. If an official, employee or consultant has any doubt as to whether or not a proposed course of action violates this ethics code, he or she may apply to the ethics training and advisory board for an advisory opinion on the matter. Advisory opinions, which must be in writing, may be relied upon by the official, employee or consultant. The subsequent actions of any such official, employee or consultant, provided they comply with the advisory opinion, shall not be grounds to sustain any complaint that the ethics code has been violated. Compliance with the advisory opinion shall constitute a complete defense to any such complaint received.

D. Reporting of a Violation.

1. If an employee believes that anyone has violated this code, he or she shall report the improper action to his or her supervisor. If the improper action involves the supervisor, the employee shall report the matter to the mayor, or if it involves the mayor, to the mayor pro tem, who will act on behalf of the city council.

2. If a consultant believes that anyone has violated this code, he or she shall report the improper action to the mayor or, if it involves the mayor, to the mayor pro tem.

3. If an official believes that anyone has violated this code, he or she shall report the improper action to the city entity on which the official sits, or before which he or she may appear, and to the mayor or, if it involves the mayor, to the mayor pro tem.

4. If an official, employee or consultant believes that a reported violation has not been addressed in good faith or that the person or persons responsible for the investigation have a conflict of interest, they may file a complaint with the ethics training and advisory board.

5. Any member of the public may file a written complaint with the ethics training and advisory board if they have good reason to believe that anyone has violated this code. Any such written complaint shall describe the claimed violation with sufficient specificity to permit the board to make a reasoned decision whether to proceed with any further investigation. The board shall retain the authority but not the obligation to proceed with review, and may dismiss a complaint without further action or review. All complaints must be submitted within 24 months of the alleged violation.

6. It is the responsibility of the person reporting a suspected violation to make a reasonable attempt to ascertain the correctness of the information furnished.

7. No official, employee or consultant shall take any kind of retaliatory action against any employee because that employee reports or investigates any suspected violation of this code.

E. Reviews.

1. Upon receipt of an allegation that an ethical violation has occurred, the ethics training and advisory board shall, within 15 days, conduct a preliminary review to determine whether there is an a priori case to answer. If the board concludes that the alleged facts are insufficient to support the claim of an ethical violation, it shall summarily dismiss the allegation.

2. If the allegation is not dismissed, the ethics training and advisory board shall, within the following 45 days, review the matter to consider the validity of the allegations, identify the consequences of the violation, and issue a written recommendation to the mayor and city council, including recommended remedies to be imposed.

3. If, during its review, the ethics training and advisory board concludes that the alleged violation may involve a breach of law, it may recommend to the mayor and city council that the matter be referred for further review to one or more of the following:

a. To the city attorney in cases where formal legal advice is necessary or helpful before continuing its investigation;

b. To the Island County district attorney in cases where a criminal activity may have been associated with the violation; and

c. To the State Auditor in cases where the city may have incurred a financial loss associated with the violation.

4. The ethics training and advisory board shall adopt written rules of procedure to be followed in each review, which written rules shall address at a minimum:

a. Prior to reaching any decision, the proceedings of the ethics training and advisory board shall be confidential to the greatest extent permitted by law, and this confidentiality requirement shall be binding to the extent permitted by law on all parties involved in the review investigation (Note: This may require that such proceedings occur in executive session; see RCW [42.30.110\(1\)\(f\)](#));

b. All parties shall be entitled to substantially equal time to present evidence, and to hear, question and answer any and all allegations made by other participants in the review; no person may engage in any ex parte communication with any member of the board;

c. Any party may, but is not obliged to, be represented or assisted by an attorney or other advisor of their choice;

d. All recommendations to the mayor and city council of the ethics training and advisory board shall be given in writing and shall be public records. All recommendations shall include a nonconfidential summary of the facts of the case and the board's analysis and rationale in support of its conclusions and any recommended remedies.

F. Remedies.

1. If, after investigation, the ethics training and advisory board concludes that a violation of this code has taken place by an elected official, then its written decision may include a recommendation that the mayor or city council issue a formal letter of censure, and may present its decision to the mayor and city council at an open public meeting.

2. If, after review, the ethics training and advisory board concludes that a violation of this code has taken place by any other party, then it may recommend to the mayor, or to the mayor pro tem if the mayor is involved in the violation and to the extent permitted by law, that he or she may take one or more of the following actions:

a. Issue a letter of reprimand to the violator if the violation is minor or technical in nature;

b. In the case of an ongoing violation, order the violator to cease and desist and order the matter giving rise to the violation be reconsidered de novo by other nonconflicted decision makers or through an alternative process;

c. Institute disciplinary proceedings against an employee who has violated this code in accordance with the prevailing personnel policies and practices of the city;

d. Terminate the city's contract with a consultant who has violated this code;

e. Dismiss any member of a city entity who has violated the code from that entity and any other city entity of which he or she may be a member;

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

g. Prohibit a party that has violated this code from conducting specified transactions with the city for a period of 12 months. (Ord. 1000 § 1, 2014; Ord. 998B § 1, 2014; Ord. 994 § 1 (Exh. A), 2013)

1.24.050 Review of ethics training and advisory board.

The ethics training and advisory board shall come under review for effectiveness and usefulness in no more than 24 months from the adoption of this code. (Ord. 1000 § 1, 2014; Ord. 998B § 1, 2014; Ord. 994 § 1 (Exh. A), 2013)

Section 2. Severability. If any section, paragraph, subsection, clause or phrase of this ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days after publication and posting of an approved summary thereof, consisting of the title.

PASSED BY THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, and approved by the Mayor at a regular meeting held this ____ day of _____, 2015.

FRED McCARTHY, Mayor

ATTEST:

DEBBIE L. MAHLER, Clerk-Treasurer

APPROVED AS TO FORM:

JEFF TARADAY, City Attorney