

**WHATCOM COUNTY COUNCIL AGENDA BILL**

**NO. 97-187E**

PEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator:	PK	7-28-97		7/29/97	Council Introduction
Division Head:				8/12/97	
Dept. Head:					
Prosecutor: Randall J. Watts	RAW	5-2-97			
Executive: Pete Kremen	PK	7-28-97			

**SUBJECT:**

Adoption of Code of Ethics

**ATTACHMENTS:**

Proposed Code of Ethics

**SUMMARY STATEMENT:**

*Request Council Approval*

*Please complete sections of box as appropriate & explain the item below.*

Related County contract #:	Should Clerk schedule a hearing? NO / / YES / / Requested date:
Amount budgeted for this item/project:\$	Is it (or will it be) within budget? YES / / NO / / (Please explain below)
Budget line item number(s):	

**ORIGINATOR'S RECOMMENDED ACTION:**

Approval of Code of Ethics

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

1997 - 187 E 7/29/97: Introduced  
 8/12/97: Substitute amended & adopted 7 - 0. Ord. #97-045

**Related File Numbers:**

**Ordinance or Resolution Number (this item only):**

*Ord. #97-045*

1 SPONSORED BY: Nelson

2  
3 PROPOSED BY: Kremen

4  
5 INTRODUCTION DATE: 7/28/97

6  
7  
8 ORDINANCE NO: 97-045

9  
10 **ESTABLISHING A CODE OF ETHICS FOR WHATCOM COUNTY**  
11 **ELECTED PUBLIC OFFICIALS**

12  
13 WHEREAS, maintaining the public's trust and confidence in County government, its officials  
14 and its processes is a high priority of the County Council and County Executive; and

15  
16 WHEREAS, it is appropriate to provide clear and concise guidelines for ethical conduct by  
17 public officials for the purpose of defining and requiring ethical behavior; and

18  
19 WHEREAS, it is reasonable to establish an independent citizen commission to provide neutral  
20 reviews, evaluations and judgments regarding official conduct that may be open to question;


21  
22 NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the "Code of  
23 Ethics" contained in Attachment A shall be approved and adopted as the County's governing  
24 framework for ethical behavior and action by elected public officials in County government.

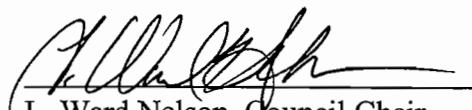
25  
26 BE IT FURTHER ORDAINED, that the "Whatcom County Ethics Commission" is hereby  
27 established and empowered to receive and adjudicate complaints made with regard to ethics  
28 issues. The Commission shall be comprised of five citizens of the County appointed by the  
29 County Executive and approved by a majority vote of the County Council.

30  
31 Adopted this 12 day of August, 1997.

32  
33  
34 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON


35  
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37   
38 \_\_\_\_\_  
39 Dana Brown-Davis, Clerk of the Council

40  
41   
42 \_\_\_\_\_  
43 L. Ward Nelson, Council Chair

44  
45 APPROVED AS TO FORM:

Approved  Denied

46  
47   
48 \_\_\_\_\_  
49 Randall Watts, Chief Civil Deputy Prosecutor

50  
51   
52 \_\_\_\_\_  
53 Pete Kremen, County Executive

**Whatcom County Government  
Code of Ethics for  
Elected Public Officials**

**1. Purpose of the Ethics Code**

The purpose of this code is to establish ethical standards, requirements and restrictions for elected public officials of Whatcom County in order that the public trust may be maintained.

**2. Governing Principle**

The governing principle of this code shall be to charge every elected official of Whatcom County government with the duty of holding themselves fully accountable to the highest ethical, professional and legal standards, at all times, while holding office, representing the County's citizens and conducting the public's business.

**3. Definitions**

For the purpose of this chapter:

- A. "Action" means any decision, determination, finding, ruling or order; and any grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect thereto;
- B. "Appearance of Fairness" means that Doctrine applied by Washington State Courts and chapter 42.36 RCW to quasi-judicial actions;
- C. "Compensation" includes payment in any form for real or personal property or services of any kind; PROVIDED, That "compensation" shall not include per diem allowances or payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.
- D. "Elected official" means any person elected at a general or special election to any county public office, and any person appointed to fill a vacancy in any such office, except judges of the superior or district courts or precinct committee officers;
- E. "Appointed official" means any person appointed by lawful authority

**Code of Ethics for Elected Public Officials**  
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1 granted in the Whatcom County Charter to an executive or administrative  
2 county public office;

3  
4 F. "Ethics" means principles of conduct governing an individual or a  
5 profession; standards of behavior;

6  
7 G. "Ex-parte communication" means any communication, written or oral and  
8 relating to a quasi-judicial action between an elected official and only one  
9 party to said action without the presence of other parties to the action;

10  
11 H. "Immediate family" means the spouse, dependent children, and other  
12 dependent relatives, if living in the household, of any such official;

13  
14 I. "Individual" means a single natural person as distinguished from a  
15 partnership or corporation;

16  
17 J. "Natural person" means an individual human being as distinguished from  
18 a partnership, corporation or other association;

19  
20 K. "Organized group" means any political committee (other than groups  
21 created for the purpose of a single specific candidate for his/her own  
22 campaign), political party, or any special interest group, as well as  
23 political action committees (including political parties) who have filed with  
24 the Washington State Public Disclosure Commission, provided that  
25 groups created solely for the purpose of campaigning for the election of a  
26 specific candidate shall not be an organized group for the purposes of  
27 this chapter;

28  
29 L. "Person" means:

30  
31 (1) An individual;

32  
33 (2) A partnership, limited partnership, public or private corporation, or  
34 joint venture;

35  
36 (3) A nonprofit corporation, organization, or association, including but  
37 not limited to, a national, state, or local labor union or collective  
38 bargaining organization and a national, state, or local trade or  
39 professional association;

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- 1                   (4)    A federal, state, or local governmental entity or agency, however  
2                                constituted;
- 3
- 4                   (5)    A candidate, committee, political committee, bona fide political  
5                                party, or executive committee thereof; and
- 6
- 7                   (6)    Any other organization or group of persons, however organized;
- 8
- 9                   M.    "Quasi-judicial actions" are those actions of the legislative body, planning  
10                               commission, hearing examiner, or other appointed or elected board which  
11                               determine the legal rights, duties, or privileges of specific parties in a  
12                               hearing or other contested case proceeding. Quasi-judicial actions do not  
13                               include legislative actions adopting, amending, or revising  
14                               comprehensive, community, or neighborhood plans or other land use  
15                               planning documents or the adoption of area-wide zoning ordinances or  
16                               the adoption of a zoning amendment that is of area-wide significance.
- 17

**4.    Appearance of Fairness**

The Appearance of Fairness Doctrine shall apply to all quasi-judicial hearings conducted by an elected official of Whatcom County. Hearings shall include, but not be limited to:

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- 23
- 24                   A.    quasi-judicial actions on all matters concerning land use;
- 25
- 26                   B.    disability board proceedings;
- 27
- 28                   C.    boundary review board proceedings;
- 29
- 30                   D.    business license revocation proceedings;
- 31
- 32                   E.    animal license enforcement proceedings; and
- 33
- 34                   F.    board of equalization proceedings.
- 35

**5.    Disclosure Requirement**

- 36
- 37
- 38                   A.    After the call to order at any quasi-judicial proceeding, the adjudicating  
39                               official(s) shall disclose for the record the existence and substance of any  
40                               ex-parte communications in which adjudicating official(s) may have  
41                               engaged.
- 42

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1           B.    At any quasi-judicial proceeding, adjudicating officials shall fully disclose,  
2           by stating same for the record, campaign contribution(s), including any  
3           contributions for the purpose of opposing a recall attempt, in excess of  
4           \$250.00 from any person who is a party to the proceedings and  
5           contributions in excess of \$500.00 from any organized group which is a  
6           party to the proceedings, received from one year prior to the date of the  
7           official's last election or appointment up to the date of the proceeding.

8  
9           C.    No elected county official shall knowingly engage in any action which will  
10          directly or indirectly affect Whatcom County, and which requires the  
11          exercise of discretion, by participating in public decisions or  
12          determinations with respect to county matters, without fully disclosing the  
13          following that are known to said official:

14  
15               (1)   That gratuities, gifts, special favors or personal expenses of the  
16               official in excess of \$100.00 in any calendar year have been made  
17               to the official by any person or entity which is a party to the action;

18  
19               (2)   That the official or any member of the official's immediate family  
20               has any interest in the action, whether direct or indirect, personal  
21               or financial;

22  
23               (3)   That the official, or any member of the official's immediate family,  
24               as reported on the Public Disclosure Commission Form F-1, has or  
25               will receive any monetary compensation as a result of a separate  
26               financial relationship with any person who is a party to the action.

27  
28   **6.    Duty to Recuse**

29  
30    Any county elected official shall remove him or herself from hearing any quasi-  
31    judicial matter where, in the judgment of that official, his or her impartiality might  
32    be reasonably questioned. Grounds for such self-removal include, but are not  
33    limited to, a violation of the Appearance of Fairness Doctrine as defined in  
34    Section 3(B).

35  
36   **7.    Restrictions on Future Employment of County Officials**

37  
38    A.    No county elected official may, within a period of one year from the date  
39    of termination of county employment, accept employment or receive  
40    compensation from an employer if:

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- (1) The county elected official, during the two years immediately preceding termination of county employment, was engaged in the negotiation or administration on behalf of the County of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration; and
- (2) Such a contract or contracts have a total value of more than ten thousand dollars; and
- (3) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts.

B. No person who has served as an elected county official may, within a period of one year following the termination of county employment, have a beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former official participated.

C. No person who has served as a elected county official may, within a period of one year following the termination of county employment, represent any person before any county board, body, agency, department, committee, examiner, adjustor, or commission regarding a specific project the former official worked on, and was in a position to make discretionary decisions or recommendations, during his/her term of service or employment unless:

- (1) The former elected county official receives no compensation for representing that person; or
- (2) The specific project was a legislative issue; or
- (3) The matter involved in the representation by the former county official directly affects properties owned by the former official.

1     **8.     *Ethics Commission — Creation and Purpose***

2  
3     **8.1 Creation**

4  
5     There is hereby created a Whatcom County Ethics Commission composed of  
6     five members appointed by the Whatcom County Executive and subject to  
7     confirmation by a majority of the County Council.

8  
9     **8.2 Purpose**

10  
11     The purpose of the Whatcom County Ethics Commission is to receive complaints  
12     of ethics violations and otherwise administer the Code of Ethics as provided in  
13     this chapter.

14  
15     **8.3 Clerk of Commission - Appointment**

16  
17     The County Executive shall provide for the clerical support of the commission  
18     from available County staff.

19  
20     **9.     *Membership — Term of Office***

- 21  
22     A.     The term of each member shall be four years without compensation,  
23     except that two of the new members appointed shall serve an initial term  
24     of two years, as determined by the drawing of lots.
- 25  
26     B.     No person shall be eligible for appointment to more than two four-year  
27     terms, except as provided in subsection (C) below.
- 28  
29     C.     An individual appointed to fill a vacancy occurring other than by the  
30     expiration of a term of office shall be appointed for the unexpired term of  
31     the member he/she succeeds, but shall be eligible for appointment to two  
32     full four-year terms thereafter only if one year or less remains in the term  
33     he/she is appointed to fill. Any vacancy occurring on the commission shall  
34     be filled within 60 days in the manner in which that position was originally  
35     filled. A vacancy shall not impair the powers of the remaining members to  
36     exercise all the powers of the commission.

37  
38     **10.    *Meetings***

- 39  
40     A.     At its first meeting each calendar year, the commission shall organize by  
41     electing a chairperson and vice chairperson to serve for a period of one

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1 year. The vice chairperson shall have the power to perform all duties of  
2 the chairperson in his or her absence;

3  
4 B. Three members of the commission shall constitute a quorum and an  
5 affirmative vote of three members is required for any action or  
6 recommendation of the commission;

7  
8 C. Meetings of the commission shall be held at least twice annually.  
9 However, the commission may meet as frequently as it deems necessary;

10  
11 D. In addition to other duties prescribed by this chapter, the commission  
12 shall:

13  
14 (1) Act as the primary determining body for complaints regarding  
15 violation of the provisions of this chapter;

16  
17 (2) Make provisions for the preservation of all files, statements,  
18 correspondence and records of proceedings for a period of seven  
19 years;

20  
21 (3) Make provisions for the appearance and participation of  
22 complainants and respondents at commission proceedings,  
23 including, when necessary, the issuance of subpoenas of  
24 witnesses, and receive all testimony under oath;

25  
26 (4) Develop and implement additional rules and procedures as the  
27 commission deems necessary, subject to approval by the County  
28 Council.

29  
30 **11. Complaint Procedures**

31  
32 A. Any natural person who believes a person subject to the code of ethics  
33 has committed a violation of the code may file a complaint with the Ethics  
34 Commission. Complaints shall be subject to the following requirements:

35  
36 (1) The complaint must be based upon facts within the personal  
37 knowledge of the complainant;

38  
39 (2) The complaint must be submitted in writing and signed under oath  
40 by the complainant;

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1 (3) The complaint must include a detailed factual description of the  
2 alleged violation including the date, time and place of each  
3 occurrence and the name of the person or persons who are alleged  
4 to have committed a violation. The complaint must also refer to the  
5 specific provisions of the code of ethics which are alleged to have  
6 been violated;

7  
8 (4) The complaint must be accompanied by all available  
9 documentation or other evidence known to the complainant to  
10 support the allegations of the complaint;

11  
12 (5) The complaint must be filed within two years of the date of the  
13 occurrence or occurrences alleged to constitute a violation of the  
14 code of ethics.

15  
16 B. Complaints shall be filed with the clerk of the Ethics Commission who  
17 shall forward the complaint and any accompanying documentation and  
18 evidence forthwith to the chairperson of the Ethics Commission. The  
19 chairperson shall review the complaint for compliance with the  
20 requirements of subsection (A) of this section. Should the chairperson  
21 find that:

22  
23 (1) The complaint is untimely; or

24 (2) The complaint has not been signed under oath; or

25 (3) The complaint does not, on its face, state facts which, if proven to  
26 be true, constitute a violation of the code of ethics referred to in the  
27 complaint; or

28  
29 (4) The complaint fails to refer to a specific provision of the code of  
30 ethics which is alleged to have been violated, the chairperson  
31 shall, within five working days of the filing of the complaint, enter a  
32 written order stating the chairperson's findings and, except as  
33 hereinafter provided, dismissing the complaint. If the chairperson  
34 finds that the complaint is deficient pursuant to findings (2) or (4),  
35 the chairperson shall issue an order notifying the complainant that  
36 unless a corrected complaint is filed within 5 days of the issuance  
37 of such order, the complaint shall be dismissed. The complainant  
38 may appeal the dismissal of a complaint under this subsection by  
39 filing an action in the Whatcom County Superior Court for a Writ of  
40 Certiorari pursuant to Chapter 7.16 RCW within 10 days of the  
41  
42



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- 1           F.     When a preliminary decision is issued pursuant to subsection (E)(2), it  
2                   shall contain findings and conclusions and a disposition of the complaint.  
3                   If the chairperson concludes a violation of the code of ethics was  
4                   committed, the preliminary decision shall include a penalty as provided for  
5                   in Section 15. Copies of the preliminary decisions shall be served  
6                   forthwith on all members of the commission by the clerk. Until it becomes  
7                   a final decision, a preliminary decision issued pursuant to subsection  
8                   (E)(2) shall be confidential and shall not be released to either the  
9                   complainant, the respondent, or any other person with the exception of  
10                  commission members and commission staff. Commission members may  
11                  either concur in the preliminary decision or request a hearing. A hearing  
12                  on the complaint before the full commission shall be scheduled by the  
13                  clerk if a request for hearing is filed with the clerk by one or more  
14                  commission members within ten days of the issuance of the preliminary  
15                  decision, PROVIDED: that commission members shall have 15 days from  
16                  the date of issuance of the preliminary decision to request a hearing if the  
17                  chairperson so provides in the preliminary decision. If a commission  
18                  member does not file a timely request for hearing, it shall be conclusively  
19                  presumed that the commission member concurs in the preliminary  
20                  decision.  
21
- 22           G.     If no timely request for hearing is made by any commission member, a  
23                   preliminary decision issued pursuant to subsection (E)(2) shall become a  
24                   final decision of the commission and shall be signed and dated by the  
25                   commission chairperson within two working days following the expiration  
26                   of the review period provided in subsection (F) above. The clerk shall  
27                   immediately notify the complainant and the respondent of the final  
28                   decision and shall deliver a copy of the final decision to each of them and  
29                   to any other person who has submitted a written request therefore. Either  
30                   the complainant or the respondent may, within thirty days of the date of  
31                   the final decision, appeal it to the Whatcom County Superior Court by writ  
32                   of certiorari pursuant to Chapter 7.16 RCW.  
33
- 34           H.     When a decision to hold a hearing is issued pursuant to subsection (E)(1)  
35                   or when a request for hearing is filed by a commission member pursuant  
36                   to subsection (F), the clerk shall schedule a hearing not more than thirty  
37                   days from the date of the preliminary decision and shall mail written notice  
38                   of the hearing to the complainant, the respondent, each member of the  
39                   commission and to any other person who has submitted a written request  
40                   therefore. In addition, notice shall be provided by publication in the official  
41                   County newspaper not less than five days prior to the date of the hearing.  
42

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- 1 I. All hearings on complaints before the Ethics Commission shall be de  
2 novo and a preliminary decision issued pursuant to subsection (E)(2), if  
3 any, shall have no force or effect and shall remain confidential. The  
4 parties may appear in person or through attorneys. Hearings shall be  
5 conducted in accordance with the following provisions:  
6  
7 (1) The complainant shall have the burden to prove by a  
8 preponderance of evidence that the violation or violations alleged  
9 in the complaint occurred.  
10  
11 (2) Not less than two days prior to the hearing date, the complainant  
12 and respondent shall each file with the clerk and serve upon the  
13 other party, a list of witnesses they wish to call at the hearing. Only  
14 those witnesses whose names appear on the witness lists may  
15 testify at the hearing. In exceptional circumstances and for good  
16 cause shown, the Commission chairperson may, in his or her  
17 discretion, permit additional witnesses to testify.  
18  
19 (3) At the commencement of the hearing, the Commission chairperson  
20 shall ask the parties to provide an estimate of the time required to  
21 present their evidence and arguments. The chairperson shall then  
22 issue an order establishing a reasonable limit on the time for each  
23 party to present his or her case which shall be equal for each party.  
24 The complainant may divide his or her allotted time between an  
25 opening presentation and rebuttal of the respondent's case. Each  
26 party may present opening and closing arguments.  
27  
28 (4) All testimony shall be given under oath administered by the clerk of  
29 the Commission. Subject to control by the chairperson, each party  
30 shall be permitted to cross-examine the witnesses of the other  
31 party.  
32  
33 (5) The clerk shall electronically record all proceedings and shall  
34 assign exhibit numbers to, and become the custodian of, all  
35 documentary evidence.  
36  
37 (6) The chairperson shall have full authority to regulate the conduct of  
38 the hearing and may take any actions reasonably necessary to  
39 maintain an orderly proceeding. The chairperson may continue a  
40 hearing to a date and time certain should the chairperson  
41 determine that such continuance is necessary.  
2

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- 1 J. At the conclusion of a hearing on a complaint, the commission shall  
2 deliberate and enter its oral decision which shall include findings and  
3 conclusions in support of the decision. The chairperson shall direct  
4 commission staff to prepare a draft written decision reflecting the  
5 commission's oral decision and shall continue the hearing to a date and  
6 time certain for commission consideration and approval of the written  
7 decision. The final written decision shall be signed and dated by the  
8 commission chairperson. The clerk shall deliver a copy of the final written  
9 decision to each party and to any other person who has submitted a  
10 written request therefore.  
11
- 12 K. A final written decision may, within thirty days of the date of the written  
13 decision, be appealed by either the complainant or the respondent to the  
14 Whatcom County Superior Court by writ of certiorari pursuant to Chapter  
15 7.16 RCW.  
16

17 **11.1. Complaints Filed Close to Elections — Limitations on Filing**  
18 **— Expedited Proceedings**  
19

- 20 A. From the date four weeks prior to any election through and including the  
21 date of the election, only those complaints may be filed which allege a  
22 violation of the code of ethics which occurred not more than one week  
23 prior to the date of filing the complaint. Immediately upon receipt of such a  
24 complaint, the clerk shall notify the chairperson and the respondent  
25 named in the complaint and shall deliver a copy of the complaint and its  
26 supporting documentation and evidence to them. Copies shall also be  
27 delivered forthwith to the remaining commission members. The clerk's  
28 notice to the respondent shall also state that the respondent may file a  
29 written response to the complaint within 5 days of the date the complaint  
30 was filed with the commission.  
31
- 32 B. Immediately upon receipt of the complaint, the chairperson shall review  
33 the complaint pursuant to subsection 11(B) and, if the complaint is  
34 defective, shall, within two days of the filing of the complaint, enter an  
35 order stating the chairperson's findings and dismissing the complaint.  
36
- 37 C. For those complaints which are not dismissed under subsection (B)  
38 above, the clerk shall confer with the Commission chairperson and shall  
39 set a date and time for an expedited hearing on the complaint to be held  
40 not less than five nor more than ten days from the date of filing the  
41 complaint.  
42

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1 D. The clerk shall deliver to the complainant, the respondent and each  
2 commission member a notice of expedited hearing on the complaint.  
3 Notice of the expedited hearing shall also be delivered to any person who  
4 has, at or prior to the time the complaint is filed, submitted a written  
5 request therefore. Notice of the hearing shall be published once in the  
6 official County newspaper prior to the hearing.

7  
8 E. The expedited hearing shall be conducted in accordance with subsections  
9 11(I), (J), and (K) except that the parties shall not be required to file  
10 witness lists prior to the hearing.

11  
12 **11.2. Computation of Time**

13  
14 As used in this chapter, the word "day" shall mean calendar day and the word  
15 "week" shall mean calendar week.

16  
17 **12. Other Requirements**

18  
19 All elected county officials shall abide by the provisions of the Whatcom County  
20 Home Rule Charter and such ethical standards as may be adopted by the  
21 Council or Executive for their respective branches.

22  
23 **13. Confidences**

24  
25 No elected county official shall disclose any confidential information secured  
26 during the course of his or her public employment or term of office, a disclosure  
27 which is not otherwise required by law, or use any such information to advance  
28 his or her or any other financial interest to the detriment of Whatcom County.

29  
30 **14. Use of County Property**

31  
32 No elected county official shall sell, divert, convert, give away, or use any county  
33 equipment, vehicles, or other county property, real or personal, other than in the  
34 performance of his/her official duties in behalf of the County.

35  
36 **15. Penalties**

37  
38 If it is determined, pursuant to the provisions of this chapter, that an ethics code  
39 violation has occurred, one or more of the following civil remedies and sanctions  
40 may be imposed in addition to any other remedies provided by law:

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- A. Any person who violates any of the provisions of this ethics code may be subject to a civil penalty of not more than \$1,000 for each such violation;
- B. Any person who fails to file a response to a complaint as required in Section 11(D) within the time required by this code may be subject to a civil penalty of \$10.00 per day for each day each such delinquency continues;
- C. Any person who fails to report a contribution or expenditure in accordance with these procedures as contained in Section 5(B) may be subject to a civil penalty equivalent to the amount he failed to report;
- D. The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

**16. Public Disclosure Rules to Govern**

The rules and precedents established by the Washington State Public Disclosure Commission shall be considered in interpreting those sections contained herein which are analogous to state law.

**17. Sunset**

This policy is effective until September 1, 2002, at which time is automatically repealed unless reenacted prior to that date by majority vote of the Council.

**18. Severability**

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.