

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 1998 - 194 A

CLEARANCES		Date	Date Received in Council Office	Agenda Date	Assigned To
Orig. Dept.:	County Council	7/22/98		7/28/98	Council Introduction
Division Head:				8/11/98	Public Hearing
Dept. Head:					
Prosecutor:					
Budget:					
Executive:					

SUBJECT:

Ordinance amending Ordinance 97-045 code of ethics for elected public officials

ATTACHMENTS

Ordinance

SUMMARY STATEMENT:

Related County Contract #:	Should the Clerk schedule a hearing? (Y/N Y Requested Date: 8/11/98
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Ordinance amending Ordinance No. 97-045 establishing a code of ethics for Whatcom County elected public officials

RECOMMENDED MOTION (for final action):

COUNCIL ACTION TAKEN:

1998 - 194 A 7/28/98: Introduced
 8/11/98: Held in committee
 9/15/98: Amended and Adopted 6-0, Imhof abstained, Ord.
 #98-057

Related File Numbers:

Ordinance or Resolution Number (this item only):

ORD. # 98-057

SPONSORED BY: Council
PROPOSED BY: Brenner
INTRODUCTION DATE: 7/28/98

ORDINANCE NO: 98-057

**AMENDING ORDINANCE NO. 97-045, ESTABLISHING A CODE OF ETHICS FOR
WHATCOM COUNTY ELECTED PUBLIC OFFICIALS**

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

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

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


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

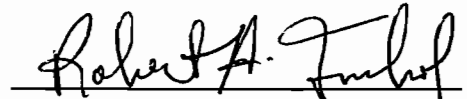
BE IT FURTHER ORDAINED, that the "Whatcom County Ethics Commission" is hereby established and empowered to receive and adjudicate complaints made with regard to ethics issues. The Commission shall be comprised of five citizens of the County appointed by the County Executive and approved by a majority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

Adopted this 15 day of SEPT., 1998.

ATTEST:

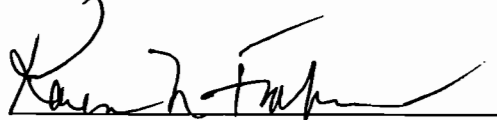
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

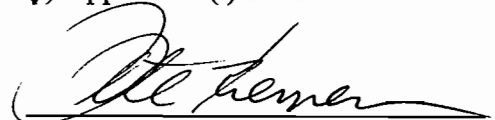

Dana Brown-Davis, Clerk of the Council


Robert A. Imhof, Council Chair

APPROVED AS TO FORM:

Approved Denied


Karen Frakes, Senior Civil Deputy Prosecutor


Pete Kremen, County Exe

**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 all elected officials 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.

A public official who has a private interest in any law or policy proposed or pending, shall disclose the fact to the Department Head of which he is a member, and in the case of a County Council member shall not vote thereon.

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 granted in the Whatcom County Charter to an executive or administrative county public office;
- F. "Ethics" means principles of conduct governing an individual or a profession; standards of behavior;
- G. "Ex-parte communication" means any communication, written or oral and relating to a quasi-judicial action between an elected official and only one party to said action without the presence of other parties to the action;
- H. "Immediate family" means the spouse, dependent children, and other dependent relatives, if living in the household, of any such official;
- I. "Individual" means a single natural person as distinguished from a partnership or corporation;
- J. "Natural person" means an individual human being as distinguished from a partnership, corporation or other association;
- K. "Organized group" means any political committee (other than groups created for the purpose of a single specific candidate for his/her own campaign), political party, or any special interest group, as well as political action committees (including political parties) who have filed with the Washington State Public Disclosure Commission, provided that groups created solely for the purpose of campaigning for the election of a specific candidate shall not be an organized group for the purposes of this chapter;
- L. "Person" means:
 - (1) An individual;
 - (2) A partnership, limited partnership, public or private corporation, or joint venture;
 - (3) A nonprofit corporation, organization, or association, including but not limited to, a national, state, or local labor union or collective bargaining organization and a national, state, or local trade or professional association;
 - (4) A federal, state, or local governmental entity or agency, however

constituted;

(5) A candidate, committee, political committee, bona fide political party, or executive committee thereof; and

(6) Any other organization or group of persons, however organized;

M. "Quasi-judicial actions" are those actions of the legislative body, planning commission, hearing examiner, or other appointed or elected board which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

N. "Private Interest" means any interest from which an elected public official will derive a direct monetary gain or suffer a direct monetary loss by reason of his or her official activity. Unless the benefit or detriment does not accrue to the elected public official as a member of a business, profession, occupation, or group in any greater extent than to other members of such group.

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:

A. quasi-judicial actions on all matters concerning land use;

B. disability board proceedings;

C. boundary review board proceedings;

D. business license revocation proceedings;

E. animal license enforcement proceedings; and

F. board of equalization proceedings.

4.1 Interest in contracts prohibited - Exceptions.

No Elected official shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such official, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

4.2 Remote interests.

A County official shall not be deemed to be interested in a contract, within the meaning of RCW 42.23.030, if he has only a remote interest in the contract and if the fact and extent of such interest is disclosed to the governing body of the county of which he is an official and noted in the official minutes or similar records of the county prior to the vote on the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the official having the remote interest. As used in this section "remote interest" means:

1. That of a nonsalaried officer of a nonprofit corporation;
2. That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. That of a landlord or tenant of a contracting party;
4. That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section shall be applicable to any official interested in a contract, though his or her interest be only remote, who influences or attempts to influence any other official or the county of which he or she is an official to enter into the contract.

4.3 Prohibited acts.

1. No County official may use his or her position to secure special privileges or exemptions for himself, herself, or others.
2. No County official may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing county, for a matter connected with or related to the official's

services as such an official unless otherwise provided for by law.

3. No County Official may accept employment or engage in business or professional activity that the official might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

4. No County official may disclose confidential information gained by reason of the official's position, nor may the official otherwise use such information for his or her personal gain or benefit.

5. Disclosure Requirement

- A. After the call to order at any quasi-judicial proceeding, the adjudicating official(s) shall disclose for the record the existence and substance of any ex-parte communications in which adjudicating official(s) may have engaged.
- B. At any quasi-judicial proceeding, adjudicating officials shall fully disclose, by stating same for the record, campaign contribution(s), including any contributions for the purpose of opposing a recall attempt, in excess of \$250.00 from any person who is a party to the proceedings and contributions in excess of \$500.00 from any organized group which is a party to the proceedings, received from one year prior to the date of the official's last election or appointment up to the date of the proceeding.
- C. No elected county official shall knowingly engage in any action which will directly or indirectly affect Whatcom County, and which requires the exercise of discretion, by participating in public decisions or determinations with respect to county matters, without fully disclosing the following that are known to said official:
 - (1) That gratuities, gifts, special favors or personal expenses of the official in excess of \$100.00 in any calendar year have been made to the official by any person or entity which is a party to the action;
 - (2) That the official or any member of the official's immediate family has any interest in the action, whether direct or indirect, personal or financial;
 - (3) That the official, or any member of the official's immediate family, as reported on the Public Disclosure Commission Form F-1, has or will

receive any monetary compensation as a result of a separate financial relationship with any person who is a party to the action.

6. *Duty to Recuse*

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

7. *Restrictions on Future Employment of County Officials*

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

8. *Ethics Commission — Creation and Purpose*

8.1 *Creation*

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

8.2 *Purpose*

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

8.3 *Clerk of Commission - Appointment*

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

9. *Membership — Term of Office*

- A. The term of each member shall be four years without compensation, except that two of the new members appointed shall serve an initial term of two years, as determined by the drawing of lots.
- B. No person shall be eligible for appointment to more than two four-year terms, except as provided in subsection (C) below.
- C. An individual appointed to fill a vacancy occurring other than by the expiration

of a term of office shall be appointed for the unexpired term of the member he/she succeeds, but shall be eligible for appointment to two full four-year terms thereafter only if one year or less remains in the term he/she is appointed to fill. Any vacancy occurring on the commission shall be filled within 60 days in the manner in which that position was originally filled. A vacancy shall not impair the powers of the remaining members to exercise all the powers of the commission.

10. Meetings

- A. At its first meeting each calendar year, the commission shall organize by electing a chairperson and vice chairperson to serve for a period of one year. The vice chairperson shall have the power to perform all duties of the chairperson in his or her absence;
- B. Three members of the commission shall constitute a quorum and an affirmative vote of three members is required for any action or recommendation of the commission;
- C. Meetings of the commission shall be held at least twice annually. However, the commission may meet as frequently as it deems necessary;
- D. In addition to other duties prescribed by this chapter, the commission shall:
 - (1) Act as the primary determining body for complaints regarding violation of the provisions of this chapter;
 - (2) Make provisions for the preservation of all files, statements, correspondence and records of proceedings for a period of seven years;
 - (3) Make provisions for the appearance and participation of complainants and respondents at commission proceedings, including, when necessary, the issuance of subpoenas of witnesses, and receive all testimony under oath;
 - (4) Develop and implement additional rules and procedures as the commission deems necessary, subject to approval by the County Council.

11. Complaint Procedures

- A. Any natural person who believes a person subject to the code of ethics has committed a violation of the code may file a complaint with the Ethics Commission. Complaints shall be subject to the following requirements:
- (1) The complaint must be based upon facts within the personal knowledge of the complainant;
 - (2) The complaint must be submitted in writing and signed under oath by the complainant;
 - (3) The complaint must include a detailed factual description of the alleged violation including the date, time and place of each occurrence and the name of the person or persons who are alleged to have committed a violation. The complaint must also refer to the specific provisions of the code of ethics which are alleged to have been violated;
 - (4) The complaint must be accompanied by all available documentation or other evidence known to the complainant to support the allegations of the complaint;
 - (5) The complaint must be filed within two years of the date of the occurrence or occurrences alleged to constitute a violation of the code of ethics.
- B. Complaints shall be filed with the clerk of the Ethics Commission who shall forward the complaint and any accompanying documentation and evidence forthwith to the chairperson of the Ethics Commission. The chairperson shall review the complaint for compliance with the requirements of subsection (A) of this section. Should the chairperson find that:
- (1) The complaint is untimely; or
 - (2) The complaint has not been signed under oath; or
 - (3) The complaint does not, on its face, state facts which, if proven to be true, constitute a violation of the code of ethics referred to in the complaint; or
 - (4) The complaint fails to refer to a specific provision of the code of ethics which is alleged to have been violated, the chairperson shall, within

five working days of the filing of the complaint, enter a written order stating the chairperson's findings and, except as hereinafter provided, dismissing the complaint. If the chairperson finds that the complaint is deficient pursuant to findings (2) or (4), the chairperson shall issue an order notifying the complainant that unless a corrected complaint is filed within 5 days of the issuance of such order, the complaint shall be dismissed. The complainant may appeal the dismissal of a complaint under this subsection by filing an action in the Whatcom County Superior Court for a Writ of Certiorari pursuant to Chapter 7.16 RCW within 10 days of the date of issuance of the order dismissing the complaint.

- C. For complaints which are not dismissed under subsection (B), the chairperson shall direct the clerk to serve a complete copy of the complaint and any accompanying documentation and evidence to the person (hereinafter referred to as the respondent) alleged to have committed a violation of the code of ethics. The clerk shall serve a copy of the complaint and accompanying information upon the respondent by certified mail or by personal service not later than seven working days following the filing of the complaint.
- D. The respondent shall, within twenty days of the date of mailing or personal service of the complaint by the clerk of the commission, file with the clerk any response to the complaint the respondent wishes to make. A response to a complaint shall be made in writing signed under oath by the respondent. A response may include a detailed statement of facts pertaining to the complaint made on personal knowledge of the respondent and may include any matter constituting a defense to the complaint. A response should be accompanied by all available documentation or other evidence known to the respondent which the respondent wishes the commission to consider. The respondent may stipulate to some or all of the facts alleged in the complaint and shall either admit or deny the alleged violation. If the violation is admitted, the respondent may also submit an explanatory statement and may request a particular disposition.
- E. Upon receipt of a response to a complaint, the chairperson shall review the complaint and response, together with all supporting documentation and evidence submitted by the complainant and the respondent. Within ten days of receipt of the response (or, if no timely response is submitted, within thirty days of the date of mailing the complaint to the respondent by the clerk of the commission), the chairperson shall issue a preliminary decision in writing. A preliminary decision shall include one of the following determinations:

- (1) Determine that a hearing is necessary in order to obtain a clear determination of the facts relevant to the complaint; or
 - (2) Determine that, based upon the complaint and response, the facts relevant to the complaint are clearly established and no hearing is necessary.
- F. When a preliminary decision is issued pursuant to subsection (E)(2), it shall contain findings and conclusions and a disposition of the complaint. If the chairperson concludes a violation of the code of ethics was committed, the preliminary decision shall include a penalty as provided for in Section 15. Copies of the preliminary decisions shall be served forthwith on all members of the commission by the clerk. Until it becomes a final decision, a preliminary decision issued pursuant to subsection (E)(2) shall be confidential and shall not be released to either the complainant, the respondent, or any other person with the exception of commission members and commission staff. Commission members may either concur in the preliminary decision or request a hearing. A hearing on the complaint before the full commission shall be scheduled by the clerk if a request for hearing is filed with the clerk by one or more commission members within ten days of the issuance of the preliminary decision, PROVIDED: that commission members shall have 15 days from the date of issuance of the preliminary decision to request a hearing if the chairperson so provides in the preliminary decision. If a commission member does not file a timely request for hearing, it shall be conclusively presumed that the commission member concurs in the preliminary decision.
- G. If no timely request for hearing is made by any commission member, a preliminary decision issued pursuant to subsection (E)(2) shall become a final decision of the commission and shall be signed and dated by the commission chairperson within two working days following the expiration of the review period provided in subsection (F) above. The clerk shall immediately notify the complainant and the respondent of the final decision and shall deliver a copy of the final decision to each of them and to any other person who has submitted a written request therefore. Either the complainant or the respondent may, within thirty days of the date of the final decision, appeal it to the Whatcom County Superior Court by writ of certiorari pursuant to Chapter 7.16 RCW.
- H. When a decision to hold a hearing is issued pursuant to subsection (E)(1) or when a request for hearing is filed by a commission member pursuant to

subsection (F), the clerk shall schedule a hearing not more than thirty days from the date of the preliminary decision and shall mail written notice of the hearing to the complainant, the respondent, each member of the commission and to any other person who has submitted a written request therefore. In addition, notice shall be provided by publication in the official County newspaper not less than five days prior to the date of the hearing.

- I. All hearings on complaints before the Ethics Commission shall be de novo and a preliminary decision issued pursuant to subsection (E)(2), if any, shall have no force or effect and shall remain confidential. The parties may appear in person or through attorneys. Hearings shall be conducted in accordance with the following provisions:
 - (1) The complainant shall have the burden to prove by a preponderance of evidence that the violation or violations alleged in the complaint occurred.
 - (2) Not less than two days prior to the hearing date, the complainant and respondent shall each file with the clerk and serve upon the other party, a list of witnesses they wish to call at the hearing. Only those witnesses whose names appear on the witness lists may testify at the hearing. In exceptional circumstances and for good cause shown, the Commission chairperson may, in his or her discretion, permit additional witnesses to testify.
 - (3) At the commencement of the hearing, the Commission chairperson shall ask the parties to provide an estimate of the time required to present their evidence and arguments. The chairperson shall then issue an order establishing a reasonable limit on the time for each party to present his or her case which shall be equal for each party. The complainant may divide his or her allotted time between an opening presentation and rebuttal of the respondent's case. Each party may present opening and closing arguments.
 - (4) All testimony shall be given under oath administered by the clerk of the Commission. Subject to control by the chairperson, each party shall be permitted to cross-examine the witnesses of the other party.
 - (5) The clerk shall electronically record all proceedings and shall assign exhibit numbers to, and become the custodian of, all documentary evidence.

- (6) The chairperson shall have full authority to regulate the conduct of the hearing and may take any actions reasonably necessary to maintain an orderly proceeding. The chairperson may continue a hearing to a date and time certain should the chairperson determine that such continuance is necessary.
- J. At the conclusion of a hearing on a complaint, the commission shall deliberate and enter its oral decision which shall include findings and conclusions in support of the decision. The chairperson shall direct commission staff to prepare a draft written decision reflecting the commission's oral decision and shall continue the hearing to a date and time certain for commission consideration and approval of the written decision. The final written decision shall be signed and dated by the commission chairperson. The clerk shall deliver a copy of the final written decision to each party and to any other person who has submitted a written request therefore.
- K. A final written decision may, within thirty days of the date of the written decision, be appealed by either the complainant or the respondent to the Whatcom County Superior Court by writ of certiorari pursuant to Chapter 7.16 RCW.

11.1. Complaints Filed Close to Elections — Limitations on Filing — Expedited Proceedings

- A. From the date four weeks prior to any election through and including the date of the election, only those complaints may be filed which allege a violation of the code of ethics which occurred not more than one week prior to the date of filing the complaint. Immediately upon receipt of such a complaint, the clerk shall notify the chairperson and the respondent named in the complaint and shall deliver a copy of the complaint and its supporting documentation and evidence to them. Copies shall also be delivered forthwith to the remaining commission members. The clerk's notice to the respondent shall also state that the respondent may file a written response to the complaint within 5 days of the date the complaint was filed with the commission.
- B. Immediately upon receipt of the complaint, the chairperson shall review the complaint pursuant to subsection 11(B) and, if the complaint is defective, shall, within two days of the filing of the complaint, enter an order stating the chairperson's findings and dismissing the complaint.

- C. For those complaints which are not dismissed under subsection (B) above, the clerk shall confer with the Commission chairperson and shall set a date and time for an expedited hearing on the complaint to be held not less than five nor more than ten days from the date of filing the complaint.
- D. The clerk shall deliver to the complainant, the respondent and each commission member a notice of expedited hearing on the complaint. Notice of the expedited hearing shall also be delivered to any person who has, at or prior to the time the complaint is filed, submitted a written request therefore. Notice of the hearing shall be published once in the official County newspaper prior to the hearing.
- E. The expedited hearing shall be conducted in accordance with subsections 11(I), (J), and (K) except that the parties shall not be required to file witness lists prior to the hearing.

11.2. Computation of Time

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

12. Other Requirements

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

13. Confidences

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

14. Use of County Property

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

15. Penalties

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

- 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.

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