

MEMORANDUM

DATE: June 5, 2003

TO: Mayor and City Council

CC: Jim Southworth

FROM: Phil Olbrechts

RE: Ethics Ordinance Amendments

Accompanying this memorandum is the ethics ordinance proposed for adoption as well as a copy of the entire ethics chapter with the proposed changes highlighted and annotated by explanatory text. The proposed amendments attempt to incorporate comments made by Council and also clarify the intent of the prior ethics ordinance. These proposed amendments should not be construed as any recommendation from staff and the Council has a wide range of legal discretion to alter or eliminate the proposed amendments. Note that in both the proposed ordinance and ethics chapter any additions of text are underlined and deleted text is stricken (line through original text). This should make it easy for the Council to compare the original language with that currently proposed. This memo addresses two additional issues: (1) the "appearance" of ethical violations, and (2) grandfathering current violations.

Appearance of Ethical Violations

One topic the proposed amendments do not address is the "appearance" of ethics violations. Some comments were made at the last Council discussion on ethics that even the "appearance" of ethics violations should not be tolerated. It was unclear whether the comments were directed exclusively at quasi-judicial actions, or whether it was felt that all City actions should appear to be proper. If the latter is the case, then the Council would have to decide whether it actually wishes to sanction a city officer or employee for "appearing" to participate in a prohibited contract, or "appearing" to have improper contacts or relationships with interested parties. In the legislative arena, elected and appointed officials are usually expected to meet and work with special interest groups (part of the constituency) as part of the political process. A council member, for instance, may be elected by campaign contributions from an environmental group and then use his or her position to advocate the platform of the environmental group. Any restrictions on this type of political activity would be constitutionally suspect. As for the

appearance of improper contracts, it is difficult to conceive of circumstances where the Council would want to reprimand someone for "appearing" to have entered into an improper contract when that actually isn't the case.

If the Council would like to subject quasi-judicial actions (essentially development permit review by the Council and planning commission) to appearance restrictions, adoption of the state appearance of fairness doctrine would be the easiest way to accomplish that objective. Using this approach, the City would have the benefit of extensive appearance of fairness law to assess alleged violations. As previously discussed, incorporating the state appearance of fairness doctrine into the ethics chapter gives the City a means of policing appearance violations and instilling more respect for the doctrine in city officials. The Council could adopt the appearance of fairness doctrine by adding the following provision:

2.52.065 Appearance of Fairness

The appearance of fairness doctrine, as codified by Chapter 42.36 RCW, as now or hereafter amended, is incorporated by this reference as if set forth in full. Any violation of the appearance of fairness doctrine shall be considered a violation of this chapter, subject to all applicable penalties.

Grandfathering

There may be some contracts or other activities that violate the former (and proposed) ordinance. The people in violation may not have realized there was a problem. Any contracts executed in violation of the former ordinance while the ordinance was in effect are arguably invalid, since illegal contracts are void. The Council can "grandfather" these activities if it wishes. Such a provision could provide as follows:

2.52.075 Vesting of Prohibited Contract

Any activity prohibited by this chapter that occurred prior to June 1, 2003 shall not be subject to this chapter to the extent that the conduct does not violate state ethics (Chapter 42.23 RCW) or appearance of fairness (Chapter 42.36 RCW) restrictions. Parties in violation of this chapter by virtue of a prohibited contract may complete the performance of the contract within the term of the contract even if the term extends beyond June 1, 2003. Renewal of the contract shall be prohibited if the person is still otherwise in violation of this chapter at the time of renewal.

City staff are working upon measures to ensure that future inadvertent ethics violations are minimized. Some ideas in the works are providing training and copies of the ethics ordinance to appointed members of City boards and commissions. A standard consultant agreement in the final stages of preparation contains a clause requiring compliance with the ethics ordinance. This clause will provide notice to consultants about the ethics ordinance and will also give the City the authority to treat violations of the ethics ordinance as a breach of contract.