

May 06, 2025

MEMORANDUM

To: Governance, Accountability, and Economic Development Committee
From: Lauren Henry, Legislative Legal Counsel
Ben Noble, Council Central Staff Director
Subject: Review for CB 120978 re: Code of Ethics

On May 8, 2025, the Governance, Accountability, and Economic Development Committee will discuss [Council Bill \(CB\) 120978](#) that would amend provisions of Seattle Municipal Code (SMC) [Chapter 4.16 Code of Ethics](#). This memo will (a) provide a summary of the proposed changes; (b) provide state laws regarding the ethical conduct of municipal officers; (c) give a brief overview of ethics codes in various Washington State cities as well as other states; and (d) report on the legislative history of SMC 4.16.030 and 4.16.070.

A. Summary of CB 120978

As the general title of the bill indicates, CB 120978 amends two sections of SMC Chapter 4.16. In SMC 4.16.030, the bill amends the definitions to the code of ethics to include “elected official”, defined as one who serves an elective office under Seattle’s Charter. Elected officials are those elected or appointed as a Councilmember, City Attorney, or Mayor. The bill also amends SMC 4.16.070 in the following four ways:

1. Creates an exception to the types of relationships that categorically create financial interests or ethical considerations for the person acting on City business. The exception would carve out landlords and tenants that reside together from those persons that otherwise live together. If enacted, the interests of one party in the landlord-tenant relationship would not give the other a financial interest that would disqualify them from City business without some greater connection than their living arrangement as landlord and tenant.
 - a. Example: If a tenant lived on the property with a landlord, the tenant’s financial interests as a specific manufacturer wouldn’t create a conflict of interest that would disqualify the landlord from acting on City business related to that manufacturing. Conversely, a landlord’s financial interests in real estate wouldn’t cause the tenant to disqualify themselves from acting on City business related to real estate.
2. Changes the characterization in SMC 4.16.070.A.3 from regulating those whose “judgment is impaired” to those with a “conflict of interest.”
 - a. For covered individuals, this change to the language has no impact on the requirements to disclose, seek guidance, and then act.

3. Deletes the provision in SMC 4.16.070.A.3 requiring elected officials to disclose their conflict of interest in writing to the Executive Director of The Seattle Ethics and Elections Commission (SEEC) and City Clerk and replaces it with an alternative approach to disclosure.

- a. The effect of this amendment depends on whether the official act is a legislative matter. "Legislative matter" is a defined term in the code of ethics and means: "any enacted or introduced council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment. A legislative matter may include a possible future council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment, if the possible future matter has been discussed on the public record at an open public meeting of the City Council or one of its committees."

For legislative matters, elected officials will follow subsection A.5 and provide written disclosure of the conflict of interest to the SEEC Executive Director and City Clerk.

For non-legislative matters, the change affects where elected officials file a disclosure. For example, presently if the Mayor believes he has a conflict of interest on an executive action, under the current code of ethics he would disclose the circumstances by filing a written disclosure with the SEEC Executive Director and the City Clerk. Under CB 120978, the Mayor would disclose the conflict of interest to the SEEC Executive Director but not the City Clerk.

4. Allows elected officials to participate in legislative matters after disclosure of a financial interest or conflict of interest. Subsections A.5 and A.6 are combined into one subsection to accomplish this purpose.

Under current law, there is only one limited exception to the prohibition against Councilmembers acting on legislative matters when they have a financial interest in the legislative matter. The current exception authorizes Councilmembers to participate in legislation establishing or adjusting taxes, fees, and utility rates even if the Councilmember has a financial interest. That language is as follows:

"SMC 4.16.070.A.5. Application to City elected officials and legislative matters.

Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply to an elected official's participation in legislative matters if:

- a. The legislative matter establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the elected official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate and a disclosure is made in accordance with subsection 4.16.070.A.6, or"

In CB 120978, the limited exception is expanded to all types of legislation so long as the elected official follows the disclosure procedure that is already in SMC 4.16.070.A.6. All but one of the procedural requirements to disclosure of the financial interest or conflict of interest would remain. They are:

- a. FIRST: An elected official posts a disclosure to their City webpage and files the disclosure with the Executive Director of the Seattle Ethics and Elections Commission and City Clerk;
- b. SECOND: A Councilmember must also announce the disclosure at an open public meeting, i.e. a full City Council or Committee meeting, in which the matter is discussed. The current code of ethics requires that this announcement be repeated at successive meetings on the legislative matter, but this provision is deleted in the proposed bill.

B. State Laws Regulating the Ethical Conduct of Municipal Officers

State law establishes the minimum ethical requirements for municipal officers in RCW 42.23 [Code of Ethics for Municipal Officers](#). This chapter applies to all elected and appointed officers of a municipality, including deputies and assistants, and those exercising the powers of a municipal officer. There are 4 prohibited acts in RCW 42.23.070: (1) secure special privileges or exemptions; (2) receive gifts/gratuities “from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law”; (3) have business or professional activity that would require disclosing confidential info acquired by official job; (4) disclose confidential info or use it for personal gain. Additionally, RCW 42.23.030 prohibits a municipal employee from having a direct or indirect interest in a contract, unless that interest is a “remote interest” as the term is defined in RCW 42.23.040.

Additionally, note that certain land use decisions and actions taken by Councilmembers in a quasi-judicial capacity occupy a uniquely regulated space. State law regulates Councilmember’s conduct through the [Appearance of Fairness Doctrine](#). These requirements remain intact and applicable to Councilmember actions regardless of any amendments to our city code of ethics. In particular, RCW 42.36.060 requires that a Councilmember receiving an ex parte communication disclose the substance of the communication “at each hearing where action is considered or taken on the subject to which the communication related.” CB 120978’s amendment to delete repeated disclosures does not impact this state law requirement, so Councilmembers in a quasi-judicial capacity that receive an ex parte communication will still be required to disclose the communication at each hearing where action is considered.

The amendments put forward in CB 120978 do not replace these state law requirements. Elected officials must still comply with state law when engaging in legislative matters. For example, if a Councilmember learns of confidential information during the course of their official role, they are prohibited by state and local law from disclosing such information. Nothing about the legislative nature of the matter would supersede state law requirements to maintain confidentiality and not disclose the information for personal gain.

C. Overview of City and State Ethics Codes

As noted above, state law prescribes the minimum ethical requirements for municipalities and each jurisdiction may thereafter choose for itself any greater requirements. Cities across Washington have come to varying conclusions about the appropriate ethical considerations in a legislative context. Some factors that might result in different rules could be the size of the jurisdiction, the part-time or full-time nature of elected office, and the representative structure of each elective office. Councilmembers seeking additional information about how state law requirements are incorporated into local ethics code may also reference the [MRSC overview of local ethics codes](#). Below is a sampling of other state codes with links where available.

[Tacoma](#): Section 1.46 regarding personal interests in legislation applies to those appearing before or supplying opinions to the City Council.

[Spokane](#): prohibits having a personal interest in legislation unless it is a remote interest and is disclosed.

Everett: does not appear to have supplementary considerations for legislators beyond the state law requirements.

[SeaTac](#): prohibits elected officials appearing before the Council from having a financial interest in legislation unless it is a remote interest and disclosed to the City Council.

Federal Way: conflict of interest is defined by the state law regarding prohibited acts, without supplemental considerations for legislators.

[Bellingham](#): requires City officials to comply with state law without supplemental considerations for legislators.

Just as cities throughout Washington have come to various determinations about the ethical considerations of legislators, so too have the fifty states. The National College of State Legislatures performed a [fifty state survey](#) that listed each state ethics code and any exceptions to its general rules. There are many code models for Councilmembers to consider, and each may be applied to our Seattle Municipal Code to the extent that the provision is consistent with and supplementary to Washington State law.

D. Legislative History of SMC 4.16.030 and 4.16.070

SMC 4.16.030 and SMC 4.16.070 were created in 1980 by Ordinance 108882. Subsequently these sections of the code of ethics have been amended nine times and eight times, respectively. The most recent amendment was in 2018. The history below will chart the iterations of these two code sections up to the code in force today.

[Ord. 108882](#) (1980): This was the original code of ethics ordinance. It Established the ethics requirements for city officers and employees; created a Board of Ethics and prescribed its powers and duties; and defined ethical offenses.

[Ord. 109950](#) (1981): clarified the scope of ethics code; prohibited disclosing info gained from employment for personal gain; and set fines for violations.

[Ord. 115548](#) (1991): amended ethics code to address minor violations without a hearing; addressed privileged or proprietary info; addressed conflicts involving contracts; and added a one-year period during which a city officer must disclose city contracts to the Elections Administrator.

[Ord. 115552](#) (1991): amended the definition of immediate family to include domestic partners.

[Ord. 116005](#) (1991): established the SEEC instead of the Fair Campaign Practices Commission and Board of Ethics; changed title from Elections Administrator to Executive Director; prescribed duties for these new entities; and added the Executive Director position to the list of exempted positions.

[Ord. 116377](#) (1992): added authority for Executive Director to initiate investigations; added a process for enforcement proceeding and filing charging documents; and shifted responsibility to the Executive Director to schedule a hearing.

[Ord. 118735](#) (1997): adopted technical amendments to change lingering outdated titles to the Executive Director and SEEC; allowed for hearings to be private but for the outcome to be made public if a violation is found; and authorizing appeals of fines to be sent to the Seattle Municipal Court.

[Ord. 121859](#) (2005): applied the Code of Ethics to firefighters at Skagit Project with limited exceptions.

[Ord. 122242](#) (2006): established ethical requirements for Seattle's advisory committees and boards.

[Ord. 123010](#) (2009): This ordinance overhauled the code of ethics to be the version we work from today. This ordinance created the terminology of the "covered individual"; retooled the SMC 4.16.070.A.1-2 prohibitions about financial interest; reworded the appearance of conflict subsection (SMC 4.16.070.A.3); and created the largest exception to the prohibited acts section when financial interests are shared by a substantial segment of population (SMC 4.17.060.A.4). Following this ordinance, SEEC Advisory Opinion 10-01 was published in 2010 and interpreted the "substantial segment" language in this Ordinance for the first time.

[Ord. 123264](#) (2010): clarified the definition of immediate family.

[Ord. 124362](#) (2013): added whistleblower retaliation to ethics code's prohibited acts.

[Ord. 125589](#) (2018): added "legislative matter" to the definitions; added language requiring the SEEC to create a rule defining what is a substantial segment of the public under SMC 4.16.070.A.4; added a limited exception in SMC 4.16.070.A.5 allowing Councilmembers to participate in legislative matters that establish or adjust taxes, fees, rates for utilities, and the like. The bill also added additional disclosure requirements when a Councilmember engaging in a legislative matter using the exception in subsection A.5. In the introduced version, the bill allowed the SEEC to come up with other exceptions to disqualification, but this provision was removed by an amendment. As an aside, that is why the end of subsection A.5 currently has an "or" that isn't connected to any subsequent section.

Note: [This prior Central Staff memo](#) (Attachment 1 to this memo) analyzed the last time that Council took up a change to the code of ethics in Ordinance 125589 as well as [CB 118701](#), which was introduced in 2016 and sponsored by then-Councilmember Bruce Harrell with an alternate proposal to amend the code of ethics. CB 118701 mirrors what is proposed in the present bill and would have authorized Councilmembers to participate in legislative matters after disclosing their financial interests. Although discussed at the committee level, CB 118701 never moved forward for a vote.

Attachments:

1. 2018 Central Staff Memo on CB 119254

Attachment 1
2018 Central Staff Memo on CB 119254
(next page)

May 14, 2018

MEMORANDUM

To: GET Committee
From: Patricia Lee
Subject: Council Bill 119254 – Limited Exception to Disqualification Requirements in the Ethics Code

[Council Bill \(CB\) 119254](#) will be discussed and up for a possible vote by the Governance, Equity and Technology (GET) Committee on Tuesday, May 15, 2018. CB 119254 would create an exception to the disqualification requirement for elected officials from action on limited types of legislative matters.

This memo (1) provides background on prior Committee discussions on disqualification requirements; (2) summarizes the current Ethics Code disqualification requirement and exemptions; and (3) summarizes the proposed change in CB 119254, highlighting a few potential issues for discussion.

Background

Currently under the Ethics Code, if a Councilmember shares a financial interest with a substantial segment of the city population he or she does not need to disclose or recuse. If that financial interest is not shared, he or she must recuse himself or herself from participation and voting.

The GET Committee previously considered [CB 118701](#) but did not vote on the bill. CB 118701 would have allowed a Councilmember whose financial interest is not shared with a substantial segment of the city population to disclose but not have to recuse himself or herself from participation. Without this change the Councilmember would have to recuse himself or herself from participation and voting.

The new bill, CB 119254, would allow a more limited exemption to what was proposed in CB 118701. Under the new bill, a Councilmember has to disclose his or her financial interest but not recuse himself or herself from participation, if the legislative matter relates to taxes, or utilities, public services or facilities rates that are applied equally or by the same percentage to the elected officials' interest and others subject to the assessment. The proposal would also define "legislative matter" and delegate to the Ethics and Elections Commission (Commission) authority to provide other exemptions for similar circumstances by rule. It would also allow the Commission to determine by rule when a financial interest is shared with a substantial segment of the population.

In addition, the new bill applies to all elected officials, including the Mayor, whereas the previous ordinance applied only to Councilmembers.

Definitions:

A couple of definitions used in the Ethics Code will make the following sections more understandable. There is also a new definition proposed for “legislative matter” which was previously undefined.

“Covered Individual” means any City officer, City employee, City contractor or City volunteer. Covered Individual also includes every individual who was a City officer, City employee, City contractor or City volunteer at the time of the act or omission that is alleged to have violated this chapter, even if he or she no longer has that status.

“Legislative matter” means any enacted or introduced council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment. A legislative matter may include a possible future council bill, ordinance, resolution, clerk file, ballot measure, or charter amendment, if the possible future matter has been discussed on the public record at an open public meeting of the City Council or one of its committees. (Proposed Definition)

"Matter" means an application, submission, request for a ruling or other determination, permit, contract, claim, proceeding, case, decision, rulemaking, legislation, or other similar action. Matter includes the preparation, consideration, discussion, or enactment of administrative rules or legislation. Matter does not include advice or recommendations regarding broad policies and goals.

“Person” is defined as an individual, association, corporation or other legal entity.

Current Required Disqualification:

The Ethics Code currently requires disqualification due to a financial interest under the following circumstances.

SMC 4.16.070.A prohibits a covered individual from participating in a matter:

- (1) In which they, their family, household member or entity they are employed with or have an official capacity with, have a financial interest; and
- (2) In which a person that employed or retained the covered individual in the last 12 months has a financial interest.

Current Exemptions:

The Ethics Director shall waive the disqualification because of employment in the last 12 months, [SMC 4.16.070.A.2](#), upon determination that there is a compelling City need for the covered individuals participation in the matter and the City’s interests will be safeguarded as evidenced in a written and submitted plan.

The disqualification due to a financial interest set forth in SMC 4.16.070.A.1 and 2 does not apply if the prohibited financial interest is shared with a substantial segment of the City’s population.

Proposed Changes to Disqualification Due to Financial Interest Requirements

CB 119254 proposes four changes, which are set out and discussed below.

1. Allow the Commission to determine whether the financial interest is shared with a substantial segment of the public and change City's "population" to "public".

SMC 4.16.07.A.4 would be amended to change the requirement that a covered individual may not participate in a matter in which they have a financial interest unless the financial interest is shared with a substantial segment of the City's population. This would be changed to a substantial segment of the public, instead of City's population, and whether the covered individual shared the financial interest would be defined by rule by the Ethics and Elections Commission (Commission). Substantial segment is currently undefined in the SMC, and the proposed change would allow the definition to be established by the Commission. The proposed language is below:

(4). Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply if the prohibited financial interest is shared with a substantial segment of the ((City's population)) public, as defined by rule by the Ethics and Elections Commission.

2. Remove disqualification for tax, utility, public services.

SMC 4.16.070 would be amended to add a new exemption to remove the disqualification requirement and allow elected officials to participate in legislative matters if the legislative matter establishes taxes, fees, rates or for utilities, other public services or facilities rates that are applied equally, proportionally or by the same percentage to the elected officials.

5. Application to City elected officials and legislative matters. Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply to an elected official's participation in legislative matters if:

a. The legislative matter establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the elected official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate and a disclosure is made in accordance with subsection 4.16.070.A.6, or

3. Allow the Commission to establish other disqualification exemptions.

SMC 4.16.070 would be amended to add a new exemption in section five to give the Commission discretion to establish additional exemptions which would remove the disqualification requirement by Commission Rule. The exemptions would not be established by legislation or codified in the SMC. *The Council may want to consider whether authority to establish additional exemptions should be delegated to the Commission.* The proposed language is:

b. Any other similar circumstance as may be prescribed by rule by the Ethics and Elections Commission pursuant to [Section 3.70.100](#).

4. Add a new disclosure requirement.

SMC 4.16.070 would be amended to add a new disclosure requirement if the elected official is exempted from disqualification because the legislative matter establishes taxes, fees, utility or other public services or facilities rates that are applied equally, proportionally or by the same percentage to the elected official's. It also places the burden of proof on the Councilmember to prove that the proper disclosure was made, if a violation is charged.

The proposed language is:

6. Before participating in a matter covered by subsection 4.16.070.A.5, the elected official must publicly disclose any financial interest. An elected official must post a written disclosure on the official's webpage and file a copy with the Executive Director and the City Clerk. A Councilmember shall additionally make such a disclosure on the public record at an open public meeting of the Council or one of its committees at which the legislative matter is discussed. The Councilmember shall also, before participating in that legislative matter at any subsequent Council or committee meeting, repeat the oral disclosure on the public record of that meeting.

a. If a Councilmember is charged with a violation of subsection 4.16.070.A.1 or 4.16.070.A.2 and asserts as an affirmative defense that a disclosure under this subsection 4.16.070.A.6 was made, the burden of proof is on the Councilmember to show that a proper disclosure was made.

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Deputy Director