Call to Order

Aldermanic President John Anglace called the workshop to order at 7:25 p.m., immediately following a special meeting of the Board of Aldermen.

Roll Call

Alderman John F. Anglace, Jr., President – present
Alderman Lynne Farrell - present
Alderman John “Jack” Finn – present
Alderman Stanley Kudej – present
Alderman Noreen McGorty – present
Alderman John P. Papa – present
Alderman Eric McPherson - present
Alderman Anthony Simonetti – excused

Martin Coughlin

Agenda Items

1. Discussion of Board of Ethics Proposed Ethics Ordinance

Alderman Anglace stated, we last met on July 27th. Since then, the Board of Ethics sent us a letter which I will read for the record:

The Board of Ethics met last week at its regular meeting and reviewed the minutes of the joint meeting held with the Board of Aldermen on July 27, 2010. After much discussion, the Board of Ethics is recommending a different approach for reviewing the proposed Code of Ethics Ordinance. We feel that the Board of Aldermen should spend time together reading, reviewing and discussing the proposed ordinance. We suggest that as the Aldermen review, they prepare a list of questions, preferably by Section number, that they would like answered by the Board of Ethics. Please remember that all of the minutes of our meetings where we discuss the proposed Code of Ethics Ordinance can be found online on the City’s website. It will certainly help you to understand our intent. Once the Board of Ethics has reviewed your questions, we can meet on our own to address your concerns and then we would welcome another joint meeting with the Aldermen, or if you’d rather, we can respond in writing to your concerns. If you have any further questions, please feel free to call me. Maria Davis, Chairman, Board of Ethics.
I just think that they adopted a position that they don’t want to meet with us, so we’ll be going forward without the input from the Board of Ethics as we discuss this. I don’t think we can order them, I don’t think we want to order them. I think it’s their prerogative that they don’t want to be here, and that’s fine. I share that with you.

The approach that has been followed here in our community and in many others and at the State level as well has been one of a “10 Commandments Approach - Thou shalt not, thou shalt not, thou shalt not, and if you do you’re in trouble and we’ll get you.”

What is it we are trying to do, and what’s the best way to accomplish it? We’re trying to promote ethical behavior among the elected and appointed officials of the City. We have to reinforce the lessons of right and wrong – of ethical behavior – that all of us learned as children, and we have to make a more concerted effort to reminding people of the Code of Ethics. It’s not about being punitive; it’s about teaching it right the first time. We want to create an ethics-driven organization versus a set of rules to abide by.

We are trying to get the hearts and minds of the elected and appointed officials – the people that serve the community – so they understand the right way to conduct themselves while in office or while an employee. It is incumbent upon us to remind them periodically of the programs that are in place. The positive approach as opposed to the punitive approach is much more lasting and I think you get better results from it. That doesn’t mean to say that you can’t identify as proposed what gifts are, what is right, what is wrong, because people need a guide.

Alderman Finn stated, we need to include the City employees. The Police Department has it’s own code of ethics. Will the Police Department’s code of ethics prevail over the City’s code of ethics?

Alderman Anglace stated, once adopted as an Ordinance by the Board of Aldermen will apply to all City employees, elected and appointed officials and everybody who serves the City and the people of the City.

Mr. Coughlin addressed the issue of how we are going to train the people that are appointed to committees or positions such as EMTs and the like – how are they to be kept up to date on what the Ethics Ordinance calls for? How will they be apprised of what is expected and what they are to do? Are new employees receiving a copy and signing for it upon their hiring?

Alderman Anglace stated, it’s pertinent as something we have to build into the Code of Ethics – how we would like the Board of Ethics to inform newly-hired, newly-elected, newly-appointed people. We can build into that annual or semi-annual review sessions.

Alderman Finn suggesting making the attendance mandatory for such training.
Alderman McGorty raised the issue of enforcing the Ordinance – and assuring that the training is received by every person it is intended for – perhaps making it a mandatory condition of employment.

Alderman Farrell discussed the practices of State Board of Education as regarding ethics. She explained that the chairman of the Board asked the Ethics Commission to write the Board members a letter explaining to them what they could and could not do. She noted they were all quite surprised – they just received it in March and she has been on the Board since 2004 – this was the first time they had ever seen it and they finally found out what they could and could not do – mostly politically.

They have a 45-minute workshop when they’re first appointed to the Board with the Commissioner and a secretary who takes notes. They just tell you that you’re on the Board and you’re expected to read all of the materials and vote on the materials.

Alderman Farrell stated, that’s it – there isn’t much else we ever received. If we’ve done something wrong we find out after we do it. For instance, there are events in the community we can’t attend – we can’t contribute to certain officials. We can contribute to federal campaigns, but we cannot contribute to most State campaigns. We just found that out.

Alderman Finn suggested that we have the same format and can put in there that City employees cannot contribute to any local candidates.

Alderman Farrell continued, there is constant updating from the legal department also. Sometimes we find out things as we go along. When we first got the information it wasn’t clear. That’s why we keep getting updates and interpretations from the legal department.

Alderman McGorty asked if there is any documentation kept that states each person attended a session.

Alderman Farrell replied no, it is simply sent to us and we don’t have to sign for anything. I do have to sign at any event that I attend that I’m not a state contractor.

Mr. Coughlin stated, the way this proposed ordinance is written is severely lacking in clarity and the extent of what I feel should be done for a training situation.

Alderman Anglance referenced a website called “governing publics great”, an online community hosted by different people. They say, “Decide on your organization’s principles of ethical behavior. Print wallet-sized cards and then teach. Look for coachable moments to align people with the principles.” They talk about “the principles of behavior,” and they say that is what you strive to embed in people’s minds – the principles of behavior. You don’t forget the enforceable rules of conduct, which, for example, are don’t take bribes, don’t favor friends, don’t accept gifts over certain value. We can all relate to that no doubt. Then it goes on to say, “Make sure everybody knows the rules.” People will take more pride in an ethical organization than in one that’s
merely non-criminal. Don’t conflate the ethics code with the enforceable rules. He makes a good point. In order to have an ethical organization you have to have peace of everybody’s mind – get them zeroed in on what is ethical conduct. The difference between ethical conduct while serving, and enforceable rules, which are the law.

Alderman Finn stated, there are people that stretch the rules to meet their own needs.

Alderman Anglace stated, there is a lot more to it, but this is an approach.

Mr. Coughlin discussed the difference between things that should be reported to one’s supervisor versus things that should be reported to the Board of Ethics. What rules apply in what situations – the personnel rules, the union rules, and how does this process fit into the Ethics process.

Alderman Anglace stated, these people are talking about the ethics of behavior versus the rules of conduct. Those are two different things. I read that the purpose of Article 1 is “to establish suitable ethical standards for all such officers, employees and officials.” And they do it by prohibiting acts or actions incompatible with the discharge of the public duties. They’re going to promote ethical standards by punitive measures – thou shalt not, thou shalt not, thou shalt not. They’ve completely missed what we talked about earlier – the educational part of this, establishing the principles of behavior and any approach to that with the people who have to conduct themselves in an ethical manner. A code has got to recognize the fact that all people have to understand what the principles of behavior are. It is the Board of Ethics responsibility to indoctrinate them.

There are two points from last meeting we talked about. One was the amount of gift. There was a position that it should be zero and Counsel made the point that zero tolerance could lead to harassment. There was no way to prohibit it. It seems this article that I read talks about not accepting gifts over a certain value. It seems there is some forgiveness.

Corporation Counsel Welch recommends that there should be some threshold. Where do you cut off the value of a gift? What is the number?

Alderman McGorty explained that the SEC uses the term “reasonable” – a “reasonable amount.” That amount is decided upon by the CEO and the Chief Compliance Officer of the organization. Even the SEC doesn’t tell you that you can’t accept any gift – they say it has to be a “reasonable amount.” They list things like sporting events, dinner, clothing, and say that each firm has to come up with a “reasonable amount,” and then they have to document every gift that they receive, even if it falls below, above or around the “reasonable amount.” That log is reviewed annually and the SEC can come in and inspect it at any time. A reasonable amount can be determined, but it is much harder to decide upon a number.

Alderman Anglace stated, another approach might be that we recommend – our Code says, here’s a number, a dollar amount, but we recommend that you not accept any gift of any amount, especially if you’re in a position such as Planning and Zoning and the gift
is coming from somebody that submits applications. If you do get those gifts, here are your options... something like that, so this person knows what to do when they get it, so there is no doubt in their mind. We have to do a good job of educating, keeping our program in front of people in a positive manner.

Mr. Coughlin discussed a copy of the Model Ethics Code that the State has prepared for City use. There are a lot of good ideas. He reiterated that the proposed ordinance before this Board as it is written is unworkable, poorly reasoned, probably unconstitutional in some places, and discourages people from getting involved in the ethics situation.

Alderman Anglace stated, I had hoped, by having the Board of Ethics here with us and I know we’re putting a burden on them and I appreciate that, but I thought it would be helpful to share with them in our discussions comments such as this so that we can get some dialogue.

Mr. Coughlin stated, if you read section five, which is the procedure for filing claims, it starts off by saying, “A person can submit a claim...” and basically then follows what you might call a justice system – there’s a grand jury hearing and a trial, a conclusion of the trial and then penalties. Unfortunately this is so weighted in favor of the person being charged with the ethics violation, it probably would be thrown out of court. The person who has been cited for a violation can hire a lawyer, but not the complainant. That person never has to be heard again. That is ridiculous. Read what the State says – the complainant and the respondent shall have a right to be represented by Counsel. This doesn’t talk about that at all. The complainant can’t even file additional information, call witnesses or do anything. There is no prosecutor here, none whatsoever. If in the unlikely circumstance that they state there is probable cause, it should take about 10 seconds,

Alderman Anglace stated, maybe we should strive to see in the Code so we know the rights of the complainant and the rights of the respondent are protected. Their role is based on the complaint that they received that there is probable cause. If there is probable cause – how do we go forward? Maybe we need five people and not three people on the Board of Ethics so that you don’t get the same people determining probable cause and sitting as judge and jury.

After further discussion, Mr. Coughlin stated, this all has to be rewritten and brought into conformity with what is normal legal procedure to defend both the rights of the complainant and the rights of the defendant.

Alderman Papa asked why the city doesn’t simply follow the State’s code of ethics. Why don’t we model ours after what they’ve proposed?

Alderman Anglace stated, in the State’s version they talk about the extent to which they have evaluated what other states do and how deeply the state gets involved in the local ethics code or portion of it. The State hasn’t yet adopted the final version. One of the things the State is recommending is that each municipality adopts a code.
Mr. Coughlin proposed that it might be necessary to simply let this ordinance die, and ask the Board of Ethics with an expanded panel of people including someone who is versed in ethical law or a consultant, to give them some guidance, using this model from the State to come up with something that may be workable.

Alderman Anglace stated, in 1995 the State came up with a model and they haven’t adopted it yet. They do list the minimum requirements in their report as:

- disclosure and recusal when a conflict of interest arises, prohibitions on gifts which might influence the action or judgment of municipal officials or employees,
- prohibitions on the use of municipal property for personal or political use,
- restrictions on representing private interests before the board or commission on which one serves or by which one is employed while on the board and for a period after leaving such board or commission,
- prohibitions on the use of position to advance private interests of oneself or others,
- confidentiality restrictions, and
- prohibitions regarding contracting with a municipality.

Those are the minimums. They admit that the 1995 model needs some updating. At a minimum we know they’re going to require all municipalities to adopt a code. We’ve already got a code. Now we have to work to make it better. It’s going to be how we go about educating the people that are covered under it. That is where the key is going to be – how good a job we can do to educate those who have to work under this code, and promote an ethical culture. It’s got to be educational, informative, and interactive. Our City website is a very good communication tool. I’m trying to think through an outline of what is important for users to know and for the Board of Ethics to follow in the event of a complaint. Then if they do find probable cause and want to impose sanctions, how will we go about the discipline. Like it or not if the complaint is founded, you have to take appropriate disciplinary action, or else your system is worthless. I would like to get the outline established so that we can build it in. Beyond this is the training phase and we want to build that in.

ADJOURNMENT

The workshop adjourned at approximately 8:45 p.m.

Respectfully submitted,

Patricia M. Bruder, Clerk
Board of Aldermen

DATE APPROVED: ________________BY: ________________

Mark A. Lauretti
Mayor, City of Shelton