

AFFIDAVIT OF POSTING
ORDINANCE CB-0-92-87

STATE OF OREGON)
COUNTIES OF CLACKAMAS)
AND WASHINGTON)
CITY OF WILSONVILLE)

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On the 16th day of March, 1988, I caused to be posted copies of the attached Ordinance CB-O-92-87, an Ordinance amending W.C. 3.354(3) to conform its Library Board membership to that of other boards and commissions; to attract qualified and interested persons to serve on the Library Board and safeguard public funds and declaring an emergency, in the following four public and conspicuous places of the City, to wit:


WILSONVILLE CITY HALL

WILSONVILLE POST OFFICE

LOWRIE'S FOOD MARKET

KOPPER KITCHEN

The ordinance remained posted for more than five (5) consecutive days prior to the time for said public hearing on the 21st day of March, 1988.



VERA A. ROJAS, City Recorder

Subscribed and sworn to before me
this 24th day of March, 1988.



NOTARY PUBLIC, STATE OF OREGON

My Commission expires: 8-23-89

ORDINANCE NO. 324

K. J. J. J.

AN ORDINANCE AMENDING W.C. ²§.354 (3) TO CONFORM ITS LIBRARY BOARD MEMBERSHIP TO THAT OF OTHER BOARDS AND COMMISSIONS; TO ATTRACT QUALIFIED AND INTERESTED PERSONS TO SERVE ON THE LIBRARY BOARD AND SAFEGUARD PUBLIC FUNDS AND DECLARING AN EMERGENCY.

WHEREAS, the City Council finds that it is in the best interest of the City to attract as many qualified and interested persons to serve on its Library Board as possible; and

WHEREAS, there exists requirements through state law, the Wilsonville Code and the City's ordinances for awarding contracts through the public bidding process, for the request for proposal process and for conflict of interest for disclosure and prohibition from participation in decision making where a financial interest occurs which provide adequate safeguards for Library Board decisions and recommendations affecting public funds in addition to W.C. ²§.354(3); and

WHEREAS, the current language of W.C. ²§.354(3) can be interpreted as an outright prohibition from being a Library Board member if there is a financial interest, either directly or indirectly, in a contract to which the Library is a party; and

WHEREAS, W.C. ²§.354(6) is a greater prohibition than for any other City board or commission membership, discourages qualified and interested persons from serving on the board, would, from time to time, cause active members to be disqualified, and given the experience with the aforementioned safeguards, is unnecessarily overly broad in its construction.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WILSONVILLE
ORDAINS AS FOLLOWS:

1. The Wilsonville Code ²3.354(3) shall be amended to read:

"(3) Board members shall receive no compensation, but shall be reimbursed for duly authorized expenses, and no member of the Board shall have any direct or substantial financial interest in any contract for goods or services for the Library to which the City is a party. Such a direct or substantial financial interest shall not disqualify a person from Board membership, provided such person first declares his or her actual conflict of interest and abstains from participating in any design of bid specifications, negotiation, award, vote, or over-seeing of such a contract on behalf of the City or its Library Board. A Board member shall disclose any potential conflict of interest in Library Board matters reasonably known to the member. Unless a majority of the remaining Board members feel that such a potential conflict would bias the member in his or her participation, it shall not disqualify the member from participation.

(a) An actual conflict of interest arises when any of the following persons have direct or substantial interest in a contract for goods and services for the Library:

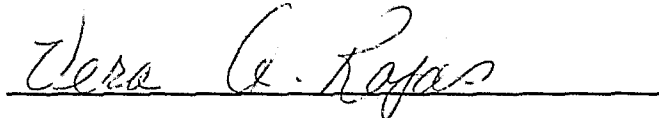
1. The member of his/her spouse.
2. A brother, sister, child, parent, father-in-law or mother-in-law of the member.
3. Any business associate of the member within two years, a prospective partner, an employer or prospective employer, or any corporation in which the member owns stock of a value of \$1,000 or greater.

(b) A potential conflict of interest arises when the member has an indirect financial interest in a contract for goods and services.

(c) Any member who is not disqualified, although he or she has declared a potential or actual conflict of interest, may be counted for the purposes of establishing a quorum.

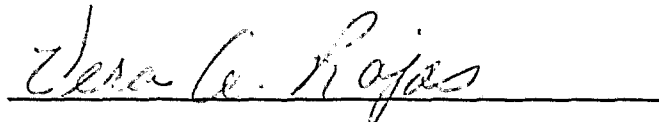
2. It appears that competitive bidding and requests for proposals for goods and services to the new library will be occurring in the near future, and it is in the economic best interests of the City to amend this section of the Wilsonville Code immediately. Therefore, an emergency is declared.

SUBMITTED to the Wilsonville City Council and read the first time at a regular meeting thereof this 7th day of March, 1988 and scheduled for a second reading at a regular meeting of the City Council on the 21st day of March, 1988, commencing at the hour of 7:30 o'clock p.m. at the Wilsonville City Hall..



VERA A. ROJAS, City Recorder

ENACTED by the Council on the 21st day of March, 1988, by the following votes: YEAS: 5 NAYS: 0.



VERA A. ROJAS, City Recorder

DATED and signed by the Mayor and effective this 23rd day of March, 1988.

William E Stark

WILLIAM E. STARK, Mayor

SUMMARY of Votes:

Mayor Stark	<u>AYE</u>
Councilor Edwards	<u>AYE</u>
Councilor Braymen	<u>AYE</u>
Councilor Clarke	<u>AYE</u>
Councilor Jameson	<u>AYE</u>

and bounds, or combination thereof, the time and place that the Commission or the Board will consider the submitted documents, and the nature of the proposed development. Failure to advertise as specified in this Section shall not invalidate any decisions or proceedings of the Commission or Board if a good faith attempt was made to comply with the notice requirements of this Code.

(2) Posted Notice

(a) The Planning Director shall have notice of development proposals, subject to Class II administrative or hearing body review, posted in at least three (3) standard locations for public notice. In addition, the property proposed for development may be posted so as to be visible and legible from adjacent public streets.

(b) Notice shall be posted not less than ten (10) nor more than fifteen (15) days prior to the date of final decision or hearing.

4.012 Hearing Procedures. (1) Public Hearings by the Board shall be conducted in accordance with procedures for evidentiary hearings set forth in Section 2.560 or as otherwise amended by City Council action.

(2) Decision - following the hearing procedure, the hearing body shall approve, conditionally approve, or deny the application or if the hearing is in the nature of an appeal, affirm, reverse or remand the decision that is on appeal.

A decision on a hearing or an application for a Development Permit shall be made within sixty (60) days of the application except that with agreement of the hearing body and the applicant or appellant, the processing of a matter under consideration may be extended for a reasonable period of time as determined by the hearing body, but not to exceed six months from the date of the first hearing on the matter.

(3) Findings and Order - The hearing body shall prepare findings of fact and a Resolution which shall include.

(a) A statement of the applicable criteria against which the proposal was tested, and of the hearing body's interpretation of what would be required to achieve compliance with the criteria and standards.

(b) A statement of the facts which the hearing body found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.

(c) The reasons for a conclusion to approve or deny.

(d) The decision to deny or approve the proposed change with or without conditions.

4.013 Participation by Interested Officers or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

4.014 Hearing Body - Conflicts of Interest. (1) A member of the hearing body shall disclose any actual or potential conflict of interest before participating in any hearing body proceeding or

action on a planning matter involving action on any particular parcel of real estate. No member shall participate as a member of the hearing body if he has an actual conflict of interest. A member of the hearing body may participate as a member of the public at large in cases where he has an actual conflict of interest.

(2) An actual conflict of interest arises when any of the following persons have direct or substantial financial interest in the particular parcel of real estate or in property immediately adjacent to that real estate:

- (a) the member or his spouse,
- (b) a brother, sister, child, parent, father-in-law or mother-in-law of the member,
- (c) any business associate of the member within the previous two years, a prospective partner, an employer or prospective employer.

(3) If a member of the hearing body shows evidence of or declares a potential conflict of interest, members of the public or other members of the hearing body may challenge his participation in hearing body proceedings on the particular issue involved. Following such a challenge the member of the hearing body may either withdraw from participation or explain the invalidity of the challenge. In cases of potential conflict, the hearing body member, himself, will decide on his final participation.

(4) A potential conflict of interest arises when the member has an indirect financial interest in the particular parcel of real estate or in property immediately adjacent to that real estate or exhibits bias toward the real estate, its owners, or its tenants.

4.015 Ex Parte Contacts. (1) The general public has a right to have hearing body members free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal any significant prehearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with Section 4.015(3).

(2) Abstention or Disqualification. Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

(3) Rights of Disqualified Member of the Hearing Body
(a) An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

(b) If four or more members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall by so doing be

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CONFLICTS OF INTEREST

The Oregon Conflict of Interest Law does not prohibit conflict of interests, but it does mandate that public notice be given by a public official encountering a potential conflict of interest. ORS 244.120, Admin. Rules 199-20-010. A copy of the administration rules are attached, (Exhibit "A"). You timely declared your conflict by declaring the potential conflict publicly prior to taking any official action thereon. ORS 244.120.

ORS 244.020 (4) defines potential conflict.

(4) "Potential conflict of interest" means any transaction where a person acting in a capacity as a public official takes any action or makes any decision or recommendation, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person's household, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception."

Thus, the initial problem arises from the failure to declare a potential conflict, not the potential conflict itself. However, the Oregon Conflict of Interest Law does not supercede other statutes or regulation, including our own Wilsonville Code limiting an official from taking official action when a conflict of interest exists. For example:

1. ORS 244.040 (1) Code of Ethics provides:

"No public official shall use official position or office to obtain financial gain for the public official. . .or for any business with which the public official is associated."

The statute is very broadly written. However, note the exceptions recited above (a) and (b) to potential conflict of interest. Exception (b) recognizes in the legislative setting the necessity of public interest politics and the remoteness of any financial gain. Civil penalties are provided in ORS 244.350 (up to \$1,000) and 244.360 (forfeiture of twice the financial gain). See attached for full text of ORS 244.040 (Exhibit "B").

2. Chapter 4 of the Wilsonville Code in Sections 4.013-4.015 discusses participation by interested officers or employees in a proposal, conflicts of interest and ex parte contacts. Their application does not appear to be limited to the Planning Commission or Design Review Board, since its language refers generally to "the hearing body". The City Council is referred to in Chapter 4; and, although "hearing body" is not defined, the Council is probably a "hearing body" subject to the limitations of Section 4.013-4.015. A copy of same is enclosed. (Exhibit "C").

Remember:

1. Always declare a potential conflict. You only need to do it once during the proceedings.

2. A councilperson may not participate in taking official action as a member of the council if she/he has an actual conflict of interest under the Oregon Code of Ethics and by the Wilsonville Code in land use matters. However, in some legislative type actions, a conflict may be too remote to be an actual conflict.

3. In land use actions, an actual conflict arises when she/he has a direct or substantial financial interest in a particular parcel of real property or in property immediately adjacent to that parcel. Included in this restriction would be a business associate within the previous two years, a prospective partner, an employer, or prospective employer.