

**CITY OF LIBERTY LAKE HEARING EXAMINER PRO TEM**

<b>Re:</b> Code of Ethics complaint by Thomas Sahlberg against Councilmember Chris Cargill.	) ) )	DECISION FOLLOWING PRELIMINARY INVESTIGATION OF PROBABLE CAUSE
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**INTRODUCTION**

The City Clerk received a written complaint alleging that a councilmember had violated the City’s Code of Ethics. In accordance with the applicable procedures, the City Clerk provided the Hearing Examiner with written notice of the complaint. Section 1-10-8(B) of the Code of Ethics directs the Hearing Examiner to conduct a preliminary investigation to determine whether probable cause exists to believe that a violation of the Code of Ethics has occurred. This decision constitutes the results of that preliminary investigation.

**SUMMARY OF ALLEGATIONS**

On or about October 20, 2023, Mr. Thomas Sahlberg submitted a written complaint to the City of Liberty Lake alleging that Councilmember Chris Cargill had violated the Code of Ethics and his oath of office. See Letter of K. Hardy 10-20-2023; see also Ethics Complaint 10-17-2023.

In the complaint, Mr. Sahlberg alleges that, at the City Council meeting on June 6, 2023, Councilmember Cargill made certain “commitments” related to his belief that greater oversight of the Board of Trustees of the Library was necessary. As a preface to his intended course of action, Councilmember Cargill characterized the Board of Trustees as “a rogue department accountable to no one.” See Ethics Complaint 10-17-2023. He further stated that without greater oversight, the City Council’s “only recourse” was “to dismiss some of the Library Board members” using a “sledgehammer approach.” See *id.*

After suggesting that his options were limited, Councilmember Cargill pledged that, until there is more oversight of the Library, he would not approve any Executive Branch appointments; he would not approve any budget requests that come from the Library; and he would be “very skeptical of any proposal” from the Executive Branch. See *id.* Since making these commitments, Councilmember Cargill has voted against confirmation of Mayoral appointments to the Civil Service and Planning Commissions on at least four occasions. See *id.*

The complaint alleges that Councilmember Cargill’s refusal to confirm Mayoral appointments constitutes a violation of his oath of office. The oath of office includes a vow to support the constitutions of the United States and the State of Washington and all local ordinances. See *id.* It also includes a vow to faithfully and impartially perform and discharge the duties of a councilmember for the City of Liberty Lake, and to do so in accordance with the law and to the best of that person’s abilities. See *id.* Mr. Sahlberg contends that Councilmember Cargill violated his duties by refusing to impartially consider candidates for appointed positions. See *id.* The complaint characterizes Councilmember Cargill’s conduct as “personal, vindictive, and partial.” See *id.* The complaint concludes that Councilmember Cargill is guilty of a dereliction of duty and, therefore, he has violated the Code of Ethics and his oath of office. See *id.*

## **DECISION STANDARD IN A PRELIMINARY INVESTIGATION**

The Liberty Lake Municipal Code (“LLMC”) delegates to the Hearing Examiner the responsibility to conduct a “preliminary investigation” into an alleged ethics violation. See LLMC 1-10-8. At this stage, the Hearing Examiner does not have the power to subpoena records or to obtain sworn testimony. See *id.* Instead, the Hearing Examiner is directed to make “such preliminary investigation as he or she deems appropriate.” See *id.*

The purpose of the preliminary investigation is to determine whether there is probable cause to believe that a violation of the Code of Ethics has occurred. See LLMC 1-10-8(B). The term “probable cause” is not defined by the LLMC. However, the term is commonly understood to mean “a reasonable ground for supposing that a charge is well-founded.”<sup>1</sup> This is consistent with the principles applied in Washington courts. The concept of probable cause requires the existence of “reasonable grounds for suspicion supported by circumstances sufficiently strong” to warrant a person of ordinary caution to believe that an offense has been committed. See e.g. *State v. Avery*, 103 Wn. App. 527, 539, 13 P.3d 226 (2000) (quoting *State v. Seagull*, 95 Wn.2d 898, 906, 632 P.2d 44 (1981)).

A mere suspicion that an offense has occurred, even if it is reasonable and well-articulated, is not enough to establish probable cause. See *State v. Avery*, 103 Wn. App. at 540. There must be reasonably trustworthy information to warrant the conclusion that an offense has occurred. See *id.*, at 539.

## **ANALYSIS OF ALLEGED VIOLATIONS OF THE CITY’S CODE OF ETHICS**

The complaint alleges that Councilmember Cargill rejected candidates for commission positions, not based upon each candidate’s merit, but because his demands for greater oversight of the library have not been satisfied. By taking actions for personal or spiteful reasons, Councilmember Cargill failed to faithfully and impartially carry out his responsibilities as a councilmember, according to the complaint. The complaint concludes that Councilmember Cargill’s conduct violated his oath of office and the City’s Code of Ethics. The Hearing Examiner disagrees with these contentions and concludes that probable cause is lacking in this case. The Hearing Examiner reaches this conclusion for the reasons that follow.

*A. Councilmember Cargill did not violate his oath of office by refusing to confirm Mayoral candidates for commission positions.*

Councilmember Cargill’s oath of office includes the vow to “faithfully and impartially perform and discharge the duties” of a councilmember. See Exhibit 8 (Oath of Office 12-30-2021); see also Exhibit 9 (Oath of Office 1-4-2022 (containing similar language)). Mr. Sahlberg contends that Councilmember Cargill violated this pledge by rejecting Mayoral appointments based upon his own personal or political agenda, without genuinely considering the qualifications of the candidates. See Ethics Complaint 10-17-2023; *Interview of T. Sahlberg*. The complaint characterizes Councilmember Cargill’s refusal to consider commission candidates as vindictive and partial. See Ethics Complaint 10-17-2023. Councilmember Cargill’s conduct, therefore, violated the City’s Code of Ethics, according to Mr. Sahlberg. The Hearing Examiner disagrees.

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/probable%20cause>.

As a threshold matter, the Code of Ethics makes no reference to the oath of office. See LLMC, Title 1, Chapter 10, Code of Ethics. The Code of Ethics identifies the specific acts that violate ethical responsibilities. The provisions of the Code of Ethics that are relevant<sup>2</sup> to this case are found in LLMC 1-10-2. However, none of those provisions state that a violation of an official's oath of office constitutes a violation of the Code of Ethics. In the absence of such a provision, it is doubtful that a violation of an oath of office, standing alone, is a proper subject of the Hearing Examiner's inquiry. The Hearing Examiner's role, at this stage, is limited to conducting a preliminary investigation into whether probable cause exists to "believe that a violation of the Code of Ethics has occurred." See LLMC 1-10-8(B). The Hearing Examiner is not charged to investigate other, potential acts of misconduct or dereliction of duty that are outside the scope of the Code of Ethics.

That aside, the Hearing Examiner does not believe that Councilmember Cargill violated his oath of office, even assuming the oath itself is germane to this investigation. The complaint asserts that Councilmember Cargill failed to "faithfully and impartially" carry out his duties, in violation of his oath. This allegation suggests Councilmember Cargill was not conscientious in observing his official duties and that his actions were biased or partial.<sup>3</sup> Mr. Sahlberg insisted, in particular, that Councilmember Cargill's rejection of commission candidates for reasons other than their qualifications was a failure to act "impartially." See Ethics Complaint 10-17-2023; *Interview of T. Sahlberg*. This "partiality," it is alleged, violated the Code of Ethics. The Hearing Examiner rejects this reasoning, for the following reasons.

First, Councilmember Cargill did not fail to perform any specific, legal duty required of a councilmember. He attended City Council meetings, participated in the manner he deemed appropriate, expressed his views when needed, and voted on the relevant matters, among other things. He did not fail or refuse to participate as a councilmember. He did not decline to carry out any duty that he was legally obligated to perform. One might disagree with Councilmember Cargill's decisions, but there is no evidence that he did not fulfill his obligations or commitments as a councilmember.

The complaint does not identify any specific provision of LLMC 1-10-2 that Councilmember Cargill allegedly violated. Rather, the complaint generally asserts that Councilmember Cargill's "partial" or "vindictive" rejection of Mayoral appointments constituted a dereliction of his duties as a councilmember. None of the provisions of LLMC 1-10-2 expressly apply to this claim. However, LLMC 1-10-2 does state a violation of "any provision" of Revised Code of Washington (RCW) Chapter 42.20 is also a violation of the Code of Ethics. See LLMC 1-10-2(A)(16). Chapter 42.20 includes a provision directed to the "failure of duty" by a public officer. That statute provides as follows:

*Whenever any **duty is enjoined by law** upon any public officer or other person holding any public trust or employment, their **willful neglect** to perform such duty, except where otherwise specifically provided for, shall be a misdemeanor.*

See RCW 42.20.100 (emphasis added).

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<sup>2</sup> LLMC 1-10-3 concerns nepotism, while LLMC 1-10-4 addresses the improper use of social media. The complaint, however, contains no allegations regarding nepotism or social media abuses. The remaining operative provisions of the Code of Ethics are found in LLMC 1-10-2. This decision, therefore, focuses on that section of the Code of Ethics.

<sup>3</sup> See <https://www.merriam-webster.com/dictionary/faithfully> (defining "faithful" as "firm in adherence to promises or in observance of duty: conscientious." (Definition 2)); see also <https://www.merriam-webster.com/dictionary/impartial> (defining "impartial" as "not partial or biased: treating or affecting all equally.")

The statute concerns a public officer's "duty" which is "enjoined by law." The term "enjoin" means prescribed, mandated, or strongly encouraged. See Black's Law Dictionary (11<sup>th</sup> ed. 2019) (definition 2 defining "enjoin"). Considered in context, the phrase "enjoined by law" refers to some duty that Councilmember Cargill was legally obligated to perform, as function of his role as a councilmember. In addition, an act of "willful neglect" involves the "intentional or reckless failure to carry out a legal duty..." See Black's Law Dictionary (11<sup>th</sup> ed. 2019) (defining "willful neglect" as a subset of "neglect").

Mr. Stahlberg asserts that Councilmember Cargill breached his duty to impartially consider and approve qualified candidates for commission positions. Presumably, Mr. Stahlberg would argue that Councilmember Cargill's rejection of commission positions violated RCW 42.20.100. Assuming that is a fair assumption, the Hearing Examiner disagrees with this premise. A councilmember may have a duty to *consider* a Mayoral appointment. However, a councilmember does not have a duty to *approve* a Mayoral Candidate. Councilmember Cargill attended the meetings to consider Mayoral appointments. He expressed no opinions on the candidates, but there is no evidence that he was not informed about their qualifications or that he did not consider their qualifications. And he voted on those candidates in each case. It is true that he refused to approve each candidate. However, he was not derelict in his duties to participate in the process. He made a conscious decision to reject each candidate, despite their qualifications, due to his continuing concern about the lack of oversight of the library.

Second, Councilmember Cargill did not act unethically by voting in the manner he thought best expressed his views and the views of the constituents he represents. Councilmember Cargill has discretion, as local legislator, to vote his conscience on matters that come before the City Council. This means he can vote against appointments in protest of past decisions of the Mayor or the City Council. He can withhold his consent on unrelated matters to put a spotlight on his concerns about library oversight, as well as to put pressure on the Mayor or other councilmembers to take action on the issue. It is not unusual, in a democratic system, for legislators to take such actions when they believe they have no other options or leverage to effect change. Sometimes legislators demand concessions on issues unrelated to the question on the table, take actions intended to delay or obstruct a vote, or simply refuse to cooperate with political opponents, to name a few examples. The use of such tactics primarily raises political questions, not ethical concerns.

Third, Councilmember Cargill did not act in a biased or partial manner within the meaning of the Code of Ethics. A councilmember is not "partial" merely because he or she has strong opinions about policy matters and votes accordingly. "Impartiality," under the Code of Ethics, does not mean free from opinions. It means free from improper influence or conflict of interest that compromises that officer's ability to be fair.

The policy statement in the Code of Ethics states that councilmembers should "be independent and impartial when establishing policy and that their positions never be used for personal gain." See LLMC 1-10-1. In other words, a councilmember should not have interests that interfere with his or her independent judgment, such as a financial stake in the outcome of a decision. If a councilmember has an interest in the outcome, that councilmember cannot be expected to exercise independent or impartial policy judgments.

In addition to broad policy statements, the Code of Ethics describes the conduct it seeks to regulate. The Code of Ethics states that it is a violation for a councilmember to "possess a substantial or controlling interest in any business entity which conducts business or contracts

with with City,” without disclosing such interest. See LLMC 1-10-2(A)(8). Similarly, it is a violation for a councilmember to have “a financial or other private interest in any legislation or other matters coming before the council and fails to disclose” that interest. See LLMC 1-10-2(A)(9). The Code of Ethics is transgressed if a councilmember violates “any provision” of Chapter 42.23 RCW. See LLMC 1-10-2(A)(16). As relevant here, RCW 42.23.070 prohibits a municipal officer from (1) using his or her position to secure special privileges or exemptions for himself, herself, or others; or (2) giving or receiving “any compensation, gift, reward, or gratuity” related to the officer’s services. See RCW 42.23.070(1)-(2).

The complaint does not allege any facts showing that Councilmember Cargill’s judgment was not independent or impartial within the meaning of the Code of Ethics. There is no allegation that he failed to disclose an interest in a business contracting with the city, or that he had a financial or other private interest in any legislation coming before the council. There is no claim that he abused his office to acquire a special privilege for himself or others, or that he gave or received anything of value related to his duties as a councilmember. In other words, there is no reason to believe that Councilmember Cargill’s independence or impartiality on policy questions was tainted by his interests in the outcome, a conflict of interest, or some opportunity for personal gain.

The complaint includes one other allegation that should be addressed. The oath of office, the complaint points out, includes a pledge to uphold the state and federal constitutions and all local ordinances. See Exhibit 2. This allegation implies that Councilmember Cargill disobeyed his oath of office by violating the state or federal constitution or a local ordinance. However, the complaint does not identify any particular provision of the state or federal constitutions, or any local ordinance, that was purportedly violated. When interviewed about these questions, Mr. Sahlberg advised that he was not claiming that Councilmember Cargill had violated the state or federal constitutions or any local ordinance. *Interview of T. Sahlberg*. As a result, the Hearing Examiner concludes that there is no probable cause to believe that Councilmember Cargill violated his oath of office on such grounds.

For the foregoing reasons, the Hearing Examiner concludes that there is no probable cause to believe that Councilmember Cargill violated the Code of Ethics by failing to honor his oath of office. As a result, no further investigation is warranted on this issue.

*B. Councilmember Cargill did not engage in any conduct identified as a violation of the Code of Ethics under LLMC 1-10-2.*

The Code of Ethics sets forth guidelines that govern the conduct of City officials, including members of City Council. See LLMC 1-10-2(A). The operative provisions of the Code of Ethics specifically identify the types of conduct that are deemed ethical violations. See LLMC 1-10-2(A)(1)-(17). The complaint, however, does not reference any of the enumerated violations of the Code of Ethics. The Hearing Examiner, therefore, looks to the substance of the complaint, in order to determine whether any of the factual allegations directly implicate the provisions of LLMC 1-10-2.

The gravamen of the complaint is that Councilmember Cargill rejected candidates for commission positions, not based upon merit, but due to vindictiveness, bias, or some personal reason. The question here is whether Councilmember Cargill’s decisions fit any of the violations enumerated in LLMC 1-10-2(A).

The types of actions that violate the Code of Ethics are set forth in subsections 1-17 of LLMC 1-10-2(A). The conduct that may be deemed unethical includes having a financial interest in dealings with the city or legislation coming before the City Council (subsections 1, 4, 8, and 9); accepting services, gifts, or other things of value in exchange for special consideration or on terms not available to others (subsections 2, 3, and 14); having employment, partnership, or other relationships that impair independence of judgment or are incompatible with a councilmember's duties (subsections 5 through 9); and violating any ordinance or resolution of the City (subsection 10); among other things.

Councilmember Cargill's decision to vote against Mayoral appointments does not implicate any of these provisions of the Code of Ethics. His judgment regarding candidates for commission positions was not compromised by any financial interest, employment or other relationship, the receipt of services or gifts, or any other potential conflicts of interest. The mere act of voting against Mayoral appointments did not violate any ordinance or resolution of the City. The complaint does not identify the provisions of the Code of Ethics that Councilmember Cargill allegedly violated. In addition, the complaint does not allege facts that match the conduct proscribed by LLMC 1-10-2(A). In short, the complaint does not establish the necessary connection between Councilmember Cargill's conduct and any specific violation of the Code of Ethics.

The complaint suggests that Councilmember Cargill's actions were unethical because his actions were motivated by spite. Attempting to assess a councilmember's ethics based upon his or her subjective motivations is a very precarious exercise, in the Hearing Examiner's view. That reality aside, the record does not support the assertion that Councilmember Cargill's actions resulted from an improper purpose.

In his June 6 comments, Councilmember Cargill stated his "opinion" that, in the absence of council oversight, the library board is a "rogue city department" that is "not really accountable to anyone." See Video of City Council Meeting 6-6-2023, 3:05:15-3:11:36. Because there is no oversight, in his view, the only available recourse to objectionable decisions by the library board is to "dismiss some of the library board members." See *id.* Councilmember Cargill then stated: "I certainly thought the scalpel approach was better than that type of sledgehammer, but I guess here we are." See *id.* For these reasons, Councilmember Cargill pledged that, in the absence of greater oversight of the library, he would not approve future Mayoral appointments, among other things. See *id.*

Councilmember Cargill has a right to express his opinions about city governance and to vote in accordance with those views. Consistent with his June 6 comments, Councilmember Cargill voted against Mayoral appointments on June 20, July 18, and September 5, 2023. See E-mail of K. Hardy 10-27-2023, 1:10 PM (Links to Videos and Minutes of City Council Meetings). In each case, he was the lone, dissenting vote. See *id.* And in each case, Councilmember Cargill submitted his vote without asking any questions or commenting on the candidates. See *id.* Thus, he did not express any improper basis or motivation for his decisions. It is apparent that Councilmember Cargill was following through on his pledge to vote against Mayoral appointments, based upon the continuing lack of oversight over the library board. This vote was ultimately an act of protest and was based on strongly held opinions about city policy. It was Councilmember Cargill's prerogative to cast his votes for this purpose. If that was a poor decision, the solution lies at the ballot box, not in an ethics proceeding.

The Hearing Examiner concludes that there is no probable cause to believe that Councilmember Cargill's refusal to approve Mayoral appointments violated to the Code of Ethics. For this reason, no further investigation of the matter is warranted.

### **CONCLUSION**

Based upon a preliminary investigation into the allegations of the complaint, the Hearing Examiner concludes that there is no probable cause to believe that a violation of the Code of Ethics has occurred.

SIGNED this 28<sup>th</sup> day of November 2023.



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Brian T. McGinn  
Hearing Examiner Pro Tem  
City of Liberty Lake

### **NOTICE REGARDING DISCLOSURE AND CONFIDENTIALITY**

Please take note that Section 1-10-8(B) of the Code of Ethics provides, in part, as follows:

*Once the preliminary investigation is complete, the person accused shall be given the name(s) of the accuser(s) and the allegations whether or not the hearing examiner finds probable cause.*

Please take further note that Section 1-10-8(C) provides as follows:

*If the hearing examiner should determine probable cause does not exist, he or she shall communicate his or her decision in writing to the person who made the initial report. The hearing examiner's determination of lack of probable cause shall remain confidential, unless the person who made the initial report chooses to make his or her complaint public. Should this latter event occur, all of the hearing examiner's records, files, notes, correspondence, and investigative materials relating to the finding of lack of probable cause shall be made open for public inspection.*