



KETCHIKAN GATEWAY BOROUGH

Board of Ethics

AGENDA

November 2, 2018, 3:30 p.m.

*Assembly Chambers, White Cliff Building
1900 First Avenue, Suite 144*

1. **Call to Order—Roll Call**
2. **Approval of the Agenda**
3. **Citizen Comments**
4. **Approval of Minutes**
5. a. **Minutes of August 24, 2018**
6. **Staff Reports**
 - a. **Report of Conflict of Interest Disclosures, Rulings, and Ethics Advice Log**
7. **Unfinished Business**
8. **New Business**
 - a. **Discussion of Topics Related to Provisions of the Borough Ethics Code**
9. **Member Comments**
10. **Meeting Date Selection**
11. **Adjournment**

KETCHIKAN GATEWAY BOROUGH

Board of Ethics

August 24, 2018

Assembly Chambers, White Cliff Building

Call to Order

The meeting was called to order by Chair Baca at 3:30 p.m. and the roll was called:

Members Present: Chris Baca, Regular Member; Dalton Fox, Regular Member; Alison Ziegler, Alternate Member; Kasia Polanska, Alternate Member

Members Absent: Dennis McCarty, Regular Member

Staff Present: Attorney Brown, Clerk Paxton

It was determined that Alternate Member Polanska would participate in voting due to the absence of Regular Member McCarty.

Citizen Comments

There were no citizen comments.

Approval of the Agenda

Chair Baca reviewed the agenda with the board.

AGENDA APPROVED VIA UNANIMOUS CONSENT

Approval of Minutes: Minutes of June 1, 2018

M/S FOX/POLANSKA to approve the minutes of June 1, 2018

MOTION DECLARED CARRIED VIA UNANIMOUS CONSENT

Staff Reports

Ethics Advice and Disclosure Log

Attorney Brown and Clerk Paxton provided an overview of the August 24 Ethics and Advice Disclosure Log, provided herein:

Part 1 – Assembly Member Conflict of Interest Disclosures and Rulings of the Chair [KGBC 2.20.090(a)]

Disclosures and Abstentions Based on Claims for Checks for Assembly Review and Acceptance

The following language is included in the published packet for the Claims: "Claims for goods or services purchased from entities in which the Mayor, an Assembly Member, or members of their immediate family as defined by the code, have a substantial financial interest will be identified. Disclosures of these relationships will be listed for Claims for checks issued to entities for which the official or official's family member is an owner, officer, director, trustee, partner, or the like, or holding a position of management. Disclosures for Claims for Mayor and Assembly fiduciary interests will be included in the disclosure. Where the relationship is solely as an employee with no variation in compensation based upon transactions with the Borough, the entity need not be listed. Rulings by the Mayor and the votes on the claims by those affected will be recorded as abstentions as to those entities or purchases on the disclosure list."

July 15- August 2, 2018 – Update to Statement of Business Entities – KGBC 2.20.050(a)(6)

In accordance with KGBC 2.20.050(a)(6), an Assembly Member provided notice to the Clerk's office of changes to their business relationships. The Clerk's office updated the spreadsheet and notified procurement staff.

August 6, 2018 – Disclosure and Ruling Regarding South Tongass Sewer Contract – KGBC 2.20.090

Assembly Member A disclosed that she was a resident of the South Tongass Service Area and would be a recipient of the sewer service provided by the contract award and would save money. The Mayor asked if the anticipated cost savings were significant and whether the contracted improvements would benefit her greater than others. She responded the project was not specific to her. Mayor Landis declared she did not hold a conflict of interest, that she was part of a greater classification of people, and would participate and vote on the matter. There were no objections raised.

Assembly Member B disclosed he resided in the Forest Park Service Area and would also benefit from the contracted sewer upgrade project. Mayor Landis ruled that, similar to Assembly Member A, Assembly Member B did not hold a conflict of interest, that he was a part of a greater classification of people, and would participate and vote on the matter. There were no objections raised.

Part 2 – Inquiries Received by Attorney or Clerk and Advice Given to Officials

June 20, 2018 – Inquiry Regarding Contractual Relationship

An official, prior to engagement with a local business as an outside contractor, inquired whether she would have to disclose the contracted relationship for all claims and any future pending business involving that local business. The Clerk advised that the business relationship should be disclosed if and when a business transaction were to come before the Assembly, and would be subject to the conflict of interest analysis and a ruling from the Chair per KGBC 2.20.090 at that time.

June 27, 2018 – Inquiry Regarding Official Conducting Business with the Borough - KGBC 2.20.050(c)

An official appointed by the Mayor and confirmed by the Assembly per KGBC 2.10.040 was contemplating submitting a proposal in response to an RFP issued by the Borough, and inquired whether doing so would violate Borough Code provisions governing "Business Dealings with Borough." Through consultation with the Clerk, the Attorney, and the appropriate department head, two analyses were conducted. First, a conflict of interest analysis was conducted and a determination was made that no foreseeable circumstance would bring the contract award issued per the RFP within the purview of the board on which the official served. The second analysis concerned whether the official's service on the board prohibited the official from being awarded the contract under KGBC 2.20.050, "Business Dealings with the Borough." It was determined that the contract, if awarded, would be permitted under code since, under KGBC 2.20.050(c), the prohibitions on certain business dealings with the Borough does not apply to members of boards, commissions or committees whose appointment is subject to confirmation by the Assembly. The official was so advised and reminded that notwithstanding this finding, should action items come before the panel on which the official serves that directly affect the official's business or contract, the matter would be subject to proper disclosure and a ruling from the chair at that time.

August 2, 2018 – Advice Regarding Disclosures at Upcoming Meetings

An official sought a review of the process for disclosure and ruling on potential conflicts of interest in advance of a meeting in which a potential disclosure would be made. The issue at hand, addressed above, involved the South Tongass sewer contract. The official was advised that per KGBC 2.20.090, disclosure by the official was appropriate as she would benefit from the contracted sewer work. The Attorney also reviewed with the official the questions commonly employed by the Chair in determining whether a financial conflict of interest existed, and whether the financial interest was to be deemed substantial. The Clerk sent an email to the official and to the mayor so they could make preparations for the disclosures and rulings at the upcoming meeting.

August 16, 2018 – Language added to agenda statement identifying that earlier disclosure and ruling would stand, without objection

Clerk and Attorney discussed the manner in which to note that potentially necessary disclosures, previously disclosed and ruled upon by the Mayor at a prior meeting, would be acknowledged in the meeting packet. It was agreed that so long as the precise matter before the Assembly and the nature of the disclosure remained the same, a notation would be included noting that the prior rulings of the chair would stand without objection. The Clerk sent an email to the officials and the mayor advising them of the notation of the disclosures and rulings in the agenda statement.

Unfinished Business

There was no unfinished business.

New Business

Discussion of Ordinance 1868 Amending KGBC 2.20 Providing an Exemption for Certain Fiduciary Relationships

Clerk Paxton read the sponsor statement submitted by Assembly Member Bradford for Ordinance 1868, as follows:

In circumstances where the Mayor appoints an Assembly Member to an outside agency board of directors, or where the Assembly approves an Assembly Member to serve on an outside agency board, it has been my experience that the Assembly Member is serving as a representative of the Borough, and therefore, the loyalty is to the Borough, and not to that outside agency.

The intent of this amendment to Borough code is to exempt from having a conflict of interest those officials who are serving on a board of another organization at the pleasure or request of the mayor or as designated or otherwise approved by the Assembly. This ordinance proposes to amend 2.20.040(a) to deem that there is no conflict of interest in such situations provided the official has first disclosed the potential conflicting fiduciary obligation and has no substantial financial interest in the organization, or, deem that such potential conflicting obligation is so insubstantial as to not impact the official's decision.

With the passage of this ordinance, examples of relationships which would be exempt from conflict of interest determinations relative to their service to those outside agencies would include, but not be limited to the following: Local Emergency Planning Committee (LEPC), Ketchikan Public Library Advisory Board, Ketchikan Visitor's Bureau Board of Directors, Southern Southeast Regional Aquaculture Association (SSRAA), UAS Campus Advisory Board, and Assembly appointments to the Southeast Conference Board, and Alaska Municipal League Board.

Attorney Brown explained the purpose of the ethics code in prohibiting improper influence. He noted that guidelines for substantial financial interests were clear boundaries, but that fiduciary obligations were often based on a personal bias, which may not be improper. The current code language, he said, ended up holding a bias against an assembly member that they may have by virtue of a mayoral appointment to serve on a board as an extension of their assembly role. The intent of the ordinance, he explained, was to try to get back to the core of the ethics code of substantial financial interest of an official and their family. He read the proposed addition of KGBC 2.20.040(a)(3): "This chapter shall not apply to a fiduciary obligation created by way of a mayoral appointment; or an appointment to a board seat or as an advisory member of a board of an outside agency where the seat is reserved for an Assembly member or other municipal official, provided the official does not have a financial interest that is ruled as substantial."

Chair Baca discussed the fact that the ruling on whether the official would abstain was subject to the interpretation of the presiding officer. Attorney Brown responded that the disclosure would be provided, but the language in the proposed ordinance would allow the presiding officer to rule that the official could participate in the discussion and vote. Member Fox commented that the ordinance seemed to bypass the safety net of a fiduciary inquiry or disclosure. Attorney Brown explained it provided guidance back to the financial component and only prohibited voting if there was a substantial financial interest.

Clerk Paxton reported that the Board, during its 2016 discussions of adding the definition of fiduciary interest into the code, focused on the disclosure piece of the fiduciary relationship as a duty of loyalty, and that it would be subject to the ruling of the chair. As described in the sponsor statement, she

explained, the rulings of the chair have been that there was a level of fiduciary obligation deemed substantial and therefore abstentions were required. She said it was her understanding that a disclosure would still be made, but the proposed amendment would define an exemption for those certain relationships as appointed by the mayor or recommended by the Assembly.

Members discussed alternative options to address the concern raised by the sponsor: 1) to remove the definition of and requirement for disclosure of fiduciary obligations altogether; and 2) to maintain the status quo where each member disclosed and the presiding officer made a ruling. Chair Baca noted the original intent to add 'fiduciary obligation' was to increase the level of transparency. Members discussed the preference that disclosures continue to be made.

Alternate Member Polanska noted that there was not a definition for the term 'substantial.' As such, she stated, it was better to have the requirements tighter. Clerk Paxton informed the board that the term was discussed at length during the process for adoption of the initial ethics code, and it was determined to be left undefined but subject to a ruling of the chair, due to the fact that what was substantial to one member may be unsubstantial to another. She further explained that a series of questions was developed for the presiding officer to ask in order to make a ruling whether the conflict of interest was substantial to the disclosing individual.

Alternate Member Polanska supported the ordinance and said she understood the need for the code amendment. Alternate Member Ziegler agreed and recommended that the ordinance move forward. Member Fox noted it appeared that safety measures were still built-in to the code, but expressed uncertainty about the amendment. Chair Baca agreed with Member Fox, noting that discomfort by the presiding officer in determining whether a member should participate was healthy. He spoke against removing the challenges. He recommended against approving the ordinance with the intent to relieve the presiding officer some pressure to call a question, or the members of the body to clarify their position.

The consensus of the board was to take no action, but requested the Clerk to forward the individual comments to the Assembly to consider at its public hearing on the ordinance.

Discussion of Topics Related to Provision of the Borough Ethics Code

There were no additional topics discussed.

Member Comments

Member Fox expressed appreciation for the reports from staff and the input from the members.

Selection of Next Meeting Date

The next quarterly board meeting was scheduled for 3:30 p.m. Friday, November 2, 2018.

The meeting adjourned at 4:15 p.m.

Chris Baca, Chair

ATTEST:

Kacie Paxton, Borough Clerk

APPROVED: _____

UNAPPROVED

Ethics Advice and Disclosure Log August 24 – November 2, 2018

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September 4, 2018 - Code Update

On September 4, 2018, the Assembly enacted Ordinance 1868A which amended KGBC 2.20 to provide exemption for certain fiduciary relationships. KGBC 2.20.040(a)(3) was amended to read as follows:

'For the purposes of this chapter, a fiduciary obligation created by way of a mayoral appointment; or an appointment to a board seat or as an advisory member of a board of an outside agency where the seat is reserved for an Assembly member or other municipal official, shall be considered upon disclosure to be an insubstantial conflict of interest, but shall remain subject to the ruling of the Chair.'

September 17, 2018 – Presiding Officer to Pass Gavel and Declare Conflict

An official, the presiding officer of governing body, in advance of a resolution calling for the governing body to support the efforts of a local non-profit agency, disclosed that they are a high-level manager within the subject non-profit agency. The public official turned the gavel over to another public official to preside over discussion and vote on the resolution. The Chair questioned the official who further disclosed that the resolution, if adopted, stood to create a potential gain or loss of a significant amount of money, and the potential loss of employment for the official. The Chair ruled that the official held a substantial financial conflict of interest and would abstain from discussion and vote on the matter.

Part 2 – Inquiries Received by Attorney or Clerk and Advice Given to Officials

August 11, 2018 – Inquiry Regarding Official Conducting Business with the Borough - KGBC 2.20.050(c)¹

An official appointed by the Mayor and confirmed by the Assembly per KGBC 2.40.030 was scheduled to preside at a meeting wherein the appointed body would review and vote on an application submitted by a resident. The official had a business relationship with the applicant that was confidential in nature and they did not want to disclose it unless required to do so. Though the relationship was financial in nature, any

¹ This matter was mistakenly omitted from the Ethics Log provided at the BOE meeting of August 24th.

potential financial interest to the official was undefined and speculative in nature. The Attorney conducted an analysis of the potential conflict pursuant to KGBC 2.20.040 and advised that the relationship required disclosure by the official, and that the conflict would be subject to the ruling of the Chair at that time. The official was also advised that the need for the required disclosure could be obviated by the official choosing to not attend and participate at the hearing.

September 14, 2018 – Advice Given to Election Official

An election official inquired of the Clerk whether it was appropriate that the spouse of a candidate for an elected city office serve as a borough precinct official. The election board for the borough and city elections are separate and distinct, but on the day of the election work in close physical proximity. The Clerk cited the potential that the presence of the spouse of a candidate taking part in conducting an election, though a separate election, could be perceived as a conflict of interest in the event the election results are challenged. The Clerk stated her preference and advice that it is not appropriate have a close relative of a candidate serve as an election official.

September 17, 2018 – Advice Given Regarding Representation of Private Interests – KGBC 2.20.040(d)

An official had previously disclosed a conflict of interest in a matter before the Assembly involving the official's employer. The official further declared that he would abstain from discussion and voting on the matter. The official then inquired whether, after abstention, he could speak from the podium as a private citizen in support of the measure or answer questions of the Assembly about the measure. After consult with the Borough Attorney, the Clerk advised that speaking from the podium violates the KGBC 2.20.040(d) prohibition on an official "for compensation . . . representing private business interests before the borough assembly". The Clerk also added that, by extension, the prohibition cited would likely extend to the answering of questions by the official about the matter given that his answers would presumably be similarly guided toward advancing the private business interests of his employer.

September 26, 2018 – Advice Regarding Post-Employment Restrictions – KGBC 2.20.100(a)

A party to an appeal inquired whether an official whose term was soon to expire could provide legal representation to that party for an appeal soon to be scheduled before the Board of Adjustment. The pertinent provision in Code reads as follows:

"2.20.100 Post-employment restrictions.

(a) No former official shall, for a period of six (6) months after the termination of the term of office, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the borough or School District and in which the official participated personally and substantially through the exercise of official action."

After consult with the Borough Attorney, the Clerk confirmed for the official that he was an "official" within the meaning of the Code (KGBC 2.20.030), the reference to a "person" includes a business (KGBC 2.20.030) and a "matter" for these purposes includes a proceeding like an appeal to the Board of Adjustment (KGBC 2.20.100(e)). It was presumed such representation would be "for compensation." The Clerk further advised that notwithstanding the steady advancement of the matter through the Planning Department and through an appeal to the Planning Commission, the official in his elective role had not participated "personally or substantially through exercise of official action" such that he would be prohibited from representing the appellants before the Board of Adjustment.

October 24, 2018 – Advice Regarding Political Activities – KGBC 2.20.040 (i) and (j)

A former official requested to submit an agenda item for the Assembly agenda which included a draft resolution in opposition to a pending Ballot Measure. The Clerk advised that KGBC 2.20.040 has historically been interpreted as precluding the Borough and Assembly from taking a stance on ballot measures and candidates. KGBC 2.20.040 reads, in relevant part:

KGBC 2.20.040 Prohibited acts.

...

(i) Political Activities, Limitations of Individuals. Appointed officials may not take an active part in a political campaign or other matter to be brought before the voters when on duty. Nothing herein shall be construed as preventing appointed officials from exercising their voting franchise, contributing to a campaign or candidate of their choice or expressing their political views when not on duty or otherwise conspicuously representing the borough. Elected officials may participate in political campaigns in the same manner as any citizen, but may not purport to represent the official position of the borough as an entity in such campaigns.

(j) Political Activity, Limitation on Borough Government. The borough may prepare and disseminate general, objective information about the issues to be voted on in local elections. Such material shall be devoid of biased statements or slant and, where appropriate, may contain pro and con statements of equal weight and value. The borough may expend funds to influence the outcome of an election only in accordance with the limitations in AS 15.13.145 as it may be modified from time to time.

The Clerk further advised that additional guidance is found in statute (AS 15.13.145(b) & (d)) relative to such resolutions, in particular, the statutory requirement that money be specifically appropriated for said purpose before being used to influence an election.