



# KETCHIKAN GATEWAY BOROUGH

## Board of Ethics

### **AGENDA**

**March 1, 2019, 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 November 2, 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***

November 2, 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 Ziegler 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.

M/S FOX/ZIEGLER to approve the agenda

AGENDA APPROVED VIA UNANIMOUS CONSENT

### **Approval of Minutes: Minutes of August 24, 2018**

M/S ZIEGLER/FOX to approve the minutes of August 24, 2018

MOTION DECLARED CARRIED VIA UNANIMOUS CONSENT

### **Staff Reports**

Ethics Advice and Disclosure Log

Attorney Brown and Clerk Paxton provided an overview of the November 2 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."

### 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 a 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)

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 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 had 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.

Clerk Paxton reported that the annual Borough Official Training was held October 29, 2018, and was well attended by members of the Borough Assembly, School Board, Service Area Boards, and Ethics Board.

### **Unfinished Business**

Clerk Paxton reported that the ethics ordinance considered by the Board at its August meeting had been adopted by the Assembly. Attorney Brown added that the ordinance had been amended to include,

based on comments of Ethics Board members, that a disclosure regarding a fiduciary interest was subject to the ruling of the Chair.

**New Business**

Discussion of Topics Related to Provision of the Borough Ethics Code

There was no new business considered.

**Member Comments**

Member Fox commented that the amendment to Ordinance 1868 to include the ruling of the Chair was appropriate.

**Selection of Next Meeting Date**

The next quarterly Board meeting was scheduled for 3:30 p.m. Friday, March 1, 2019.

The meeting adjourned at 3:50 p.m.

\_\_\_\_\_  
Chris Baca, Chair

ATTEST:

\_\_\_\_\_  
Kacie Paxton, Borough Clerk

**APPROVED: \_\_\_\_\_, 2018**

## Ethics Advice and Disclosure Log November 3, 2018 – February 20, 2019

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

#### Revision to Claims Disclosures and Posting of Spreadsheet of Officials' Business Relationships

The following was presented by the Mayor to the Assembly on December 17, 2018, and has been implemented by staff:

Assembly Members have multiple obligations to disclose their financial interests:

- ✓ Prior to submitting a competitive bid or proposal – KGBC 2.20.050(a)(4)
- ✓ Annually, on the APOC POFD statement – KGBC 2.20.050(a)(6)
- ✓ When financial or fiduciary relationship changes occur – KGBC 2.20.050(a)(6)
- ✓ Prior to Assembly discussion on a matter that the official is involved in that may result in a violation of the Ethics Code – KGBC 2.20.090(a)

Omitted from this list is an additional disclosure, required by neither law nor code, involving identifying individual claims related to the Mayor and Assembly members that became routine over time.

Per KGBC 2.15.020(f), the order of business at an Assembly meeting requires Assembly's "acceptance of claims." The claims report, a compiled list of all checks and payments made by Borough Finance, shows transactions involving previously appropriated funds, expended pursuant to the Borough's procurement. The Assembly's acceptance of the claims is a simple acknowledgement of payments made in the prior reporting period, and the practice of requiring disclosure relative to claims gradually developed as an effort to enhance openness and transparency in governmental processes. It does, however, nothing to safeguard the public from any action prohibited by the Borough's ethics code.

The recent amendment to the ethics code requiring disclosure of fiduciary interests (in addition to existing disclosure of substantial financial interests) has added steps to the list of disclosures identified in the claims report for each meeting packet, such that any payments made to entities of which the Mayor or an Assembly Member serve on the board or advisory committee of that entity, must also be individually called out. The practice takes significant staff time during each packet preparation.

In place of the prior practice of identifying each after-the-fact payment to an entity in which the Mayor and Assembly Members have a financial or fiduciary connection, reports are now provided in the following manner:

1. At least once a quarter a report of sales to Assembly members be provided listing number of sales and total price. This is currently being done in accordance with KGBC 2.20.050(a)(5);
2. Annually, after the annual filing of the APOC POFD statements, the Clerk will provide a spreadsheet of Official Business and Fiduciary Interests held by Assembly members;
3. Annually, after the annual election and annual appointments to Assembly committees, the Clerk will provide a spreadsheet of Official Business and Fiduciary Interests to the Assembly;
4. The Clerk publishes the current spreadsheet of Official Business and Fiduciary Interests of the Assembly on the Assembly page of the Borough website.

December 17, 2018 - Official's Disclosure of Appointment to National Organization

An official reported that he had recently been appointed by the Alaska Municipal League (AML) as the National Association of Counties (NACo) Representative for Alaska and the Western Interstate Region (WIR). He reported he had signed a conflict of interest statement for NACo.

January 21, 2019 – Official's Disclosure of Potential Conflict of Interest in Capital Project Funding Requests [KGBC 2.20.090(a)]

The Assembly revised by resolution the list of requests for state funding to include a renovation of the Norman Walker Field complex. The field is the principal facility for use by the high school baseball team. An official disclosed that his son was an assistant coach for the high school baseball team. After examination by the presiding officer, the official advised that he did not expect to have a gain or loss of money regardless of the action taken. The presiding officer ruled that there was no conflict of interest. There were no objections.

January 21, 2019 – Official's Disclosure of Potential Conflict of Interest in Enrollment in Medical Program [KGBC 2.20.090(a)]

An official advocating for the Borough to authorize participation in a NACo-sponsored medical and prescription discount program, disclosed that she had a potential conflict of interest as she was currently without health insurance and would stand to potentially receive a financial benefit if Borough participation was approved. Upon questioning by the presiding officer, the official advised that she did not expect to gain or lose a substantial amount of money and that the program was not specific to her. It was ruled that the official did not hold a conflict of interest, that she was part of a greater classification of people, and would be able to participate and vote on the matter. There was no objection.

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

Annual Alaska Public Offices Commission (APOC) Public Official Financial Disclosure (POFD) Forms Due [KGBC 2.20.050(a)(6)]

During the first week of January, Clerk's office staff began sending notices of the annual requirement for Borough officials to submit their APOC POFD forms by the filing deadline of March 15, 2019. Borough officials required to file the POFD are: Mayor and Assembly members; School Board Members; Planning Commissioners; and the Borough Manager. In accordance with Alaska statute and Borough code, the municipal clerk is the custodian of the original form, with a copy to APOC. Municipalities with a population of less than 15,000 have the option to file online or a paper form. APOC will issue fines to late filers. In 2018, all Borough officials filed on or before the deadline. Staff will continue to provide reminders until the March 15 deadline.

January 17, 2019 – Inquiry Regarding Personnel Serving as Security Officers [KGBC 3.40.010 and 3.40.050]

*While this segment does not necessarily relate to Borough officials, it does have relatable value as it pertains to Borough employees.*

The Attorney received an inquiry regarding whether Borough airport law enforcement personnel could provide security services at other Borough facilities for non-airport purposes. The response was two-fold. The first issue being that the service could not be provided off of the airport site as an extension of the Borough's airport powers, because the authority of the airport police flows from the Borough's airport powers. The Borough does not have police powers. The second centered on the ability of the airport police personnel, if considering providing the service as a contractor and not in their official capacity, would need to comply with the provisions in KGBC 3.40.020 (Personnel code – restrictions on employees) and also seek approval for engaging in outside work in a memorandum to the Borough Manager in accordance with KGBC 3.15.050 (Outside work).

February 14, 2019 – Advice to Official Regarding Representation of Assembly Position [KGBC 2.20.060(b)]

The Clerk received an inquiry from a Borough official to transmit a letter to State officials requesting State action on an item that had not previously been acted on specifically by the elected body. The request was for the letter to be authored and transmitted by an elected official of the elected body. While the governing body had considered a similar topic, it had not considered the actions being requested in the letter. The Clerk, in accordance with KGBC 2.20.060 (Representation of Assembly position), provided three options: 1) Provide the draft letter to the governing body for approval at its next public meeting prior to being sent by the elected official; 2) Edit the letter accordingly such that it did not purport to represent the position of the governing body but only that of the individual official; and 3) Transmit with the Borough Manager as author of the letter. As the administrative head of the Borough, the Manager has the authority to set policy and speak on behalf of the Borough. The elected official directed staff to pursue the third option and the letter was authored by the Manager and transmitted to the State officials.