

**KETCHIKAN GATEWAY BOROUGH
BOARD OF ETHICS**

RULES OF PROCEDURE

I. CREATION

- (A) The Ketchikan Gateway Borough [KGB] Board of Ethics [Board] was formed by the borough assembly through Ordinance No. 1366 Substitute [COI Code] adopted on November 21, 2005.
- (B) *Declaration of Policy*.¹
- (1) High moral and ethical standards among the borough elected and appointed officials and borough employees are essential to assure the trust, respect, and confidence of the people of this borough;
 - (2) A code of ethics for the guidance of the borough elected and appointed officials and borough employees will:
 - (a) Discourage the borough elected and appointed officials and borough employees from acting upon personal or financial interests in the performance of their public responsibilities;
 - (b) Improve standards of public service; and
 - (c) Promote and strengthen the faith and confidence of the people of this borough in public officials and employees.
 - (3) Holding public office or employment is a public trust, and as one safeguard of that trust, the people require the borough elected and appointed officials and borough employees to adhere to a code of ethics;
 - (4) A fair and open government requires that the borough elected and appointed officials and borough employees conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
 - (5) Any effort to benefit a person's financial interest through official action is a violation of the public trust. The assembly finds that as long as this chapter does not interfere with the full and faithful discharge of the duties and responsibilities of a borough elected or appointed official or employee, this chapter does not prevent that person from following other pursuits. The borough assembly further recognizes that:

¹ COI Code 2.20.010

- (a) In a municipality such as the Ketchikan Gateway Borough, elected and appointed officials and borough employees are drawn from society and therefore often have financial interests in the decisions and policies of local government;
 - (b) People who serve as elected or appointed officials or borough employees should retain the right to interests of a financial nature;
 - (c) Standards of ethical conduct for elected and appointed officials and borough employees must distinguish between those minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material.
- (6) Unethical conduct is prohibited. However, there is no impropriety if, as to a specific matter, an elected or appointed official or borough employee:
- (a) Has a financial interest in the matter which is insubstantial or which is possessed generally by the public or a large class of persons to which the person belongs;
or
 - (b) Performs some duty or has some influence which would have insubstantial or conjectural effect on the matter.
- (7) In order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
- (8) No code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
- (9) Compliance with a code of ethics is an individual responsibility; thus all who serve the borough have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

II. BOARD ORGANIZATION AND ADMINISTRATION

(A) *The Board.*²

- (1) The board shall consist of three regular members and two alternate members appointed by the mayor and confirmed by the assembly.
- (2) Regular and alternate members of the board shall not:

² COI Code 2.55.010

- (a) Hold other elected office, appointed position with the borough, public or political party office;
 - (b) Endorse or engage in any political or campaign activity on behalf of any candidate for public office; and
 - (c) Be an employee of the borough or school district or any subdivision thereof.
- (3) Regular and alternate members of the board shall be appointed for a term of three years and hold office until a successor has been appointed and has qualified, but in no case shall this extend beyond three months after expiration of the regular or alternate member's term.
- (4) Vacancies shall be filled in the same manner that original appointments are made and shall be filled for the unexpired term of the regular or alternate member whose place has become vacant.³

(B) *Staff:*

The office of the borough clerk shall serve as administrative and secretarial staff to the board, shall take and preserve minutes of all meetings, including those deemed confidential, and shall produce all reports and written documents. The borough clerk shall render an annual report on the costs of such activities, which shall be included in the annual budget as a separate item.⁴

(C) *Board Contact Information (subject to change at any time):*

The Board may be contacted through the Borough Clerk's Office:
Physical and Mailing Address: 1900 First Avenue Suite 115, Ketchikan, Alaska 99901.
Telephone Number: (907) 228-6605
Fax Number: (907) 228-6697
Office hours are 8:00 a.m. to 5:00 p.m.
The Board's e-mail address is: ethics@kgbak.us

(D) *Board Meetings and Records:*

- (1) The Board shall meet as often as it deems necessary to carry out its duties under the COI Code. A meeting may be called by the chair or by a majority of its members upon request to the chair or person acting in his or her stead. The chair shall choose the location of all Board meetings, taking into consideration the convenience of all Board members.
- (2) Board meetings shall be conducted in accordance with the Alaska Open Meetings Act (AS 44.62.310-.312).

³ COI Code 2.55.010

⁴ COI Code 2.55.030(e)

- (3) Should any member have a known conflict of interest or appearance of conflict with respect to any matters before the Board, that member should state the conflict and/or appearance of conflict and refrain from participation.
- (4)⁵ A Board member who will be absent from a meeting may participate in and vote at the meeting by telephone or other electronic means under the following circumstances:
 - a. The meeting is held with two (2) members physically present.
 - b. Reasonable technical capabilities are available at the meeting location to allow the member to participate by teleconference, to include being able to hear and engage in discussion, and being audible to all persons participating in the meeting;
 - c. Prior to the meeting reasonable efforts are made to ensure that the member participating by teleconference is provided with the meeting agenda and other pertinent documents to be discussed and/or acted upon; access to the agenda and documents from the borough's website will be considered sufficient access; and
 - d. All votes taken at the meeting are by roll call.
 - e. The Board chair may participate in meetings of the Board as set forth in items a. to d. above but shall designate a member who is physically present to chair the meeting.
 - f. Board members may not use teleconferencing as a regular form of participating in meetings of the Board.

(E) *Board Action:*⁶

- (1) The Board acts by a majority of members present at a meeting at which there is a quorum. Three (3) members of the board consisting of at least two (2) regular members and up to one (1) alternate member shall constitute a quorum. A two-thirds [2/3] vote of the three regular members shall be necessary to take any action.
- (2) Any regular member may administer oaths and receive testimony from witnesses at a meeting of the board of ethics.
- (3) Alternate members, unless serving in the place of a regular member, shall not participate in debate or vote upon actions of the board.⁷

⁵ Similar to Assembly teleconferencing requirements, See KGB Code 2.15.050

⁶ COI Code 2.55.030(a)

⁷ COI Code 2.55.030(c)

(F) *Disqualification from Participation:*

- (1) In the event a regular member has a conflict on a pending board case in violation of this chapter the regular member shall declare the conflict and be excused from serving on the board for the duration of the case. The remaining regular members shall select an alternate member for hearing and decision of the case for which the replaced regular member is prevented from participating by a conflict. The selected alternate member shall have all the powers and duties of a regular member only while serving as a replacement for a regular member.⁸

(G) *Meeting Minutes:*

- (1) The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, and shall keep records of its investigations and other official actions.⁹
- (2) The minutes of the Board shall be available for public inspection at the borough clerk's office during regular office hours and shall be posted on the borough's website at www.kgbak.us

III. POWERS AND DUTIES OF THE BOARD

The Board shall have the power and duty to:¹⁰

- (A) Initiate and receive complaints of violations of any of the provisions of this chapter;
- (B) Conduct investigations, inquiries and hearings concerning any matter covered by this chapter;
- (C) Subpoena persons or documents and, by a majority vote, issue subpoenas to the fullest extent authorized by law;
- (D) Determine whether to investigate and whether to act upon any particular complaint;
- (E) Request the assistance of other appropriate agencies in conducting investigations;
- (F) Consult with borough agencies, officials and employees on matters involving ethical conduct which are specific to the Ketchikan Gateway Borough Board of Ethics;
- (G) Recommend such legislative action as it may deem appropriate to effectuate the policy of this chapter;

⁸ COI Code 2.55.030(b)

⁹ COI Code 2.55.030(d)

¹⁰ COI Code 2.55.020

- (H) Promulgate rules and regulations for the conduct of board of ethics activities, including procedural rules consistent with the requirements of due process of law, for approval of the borough assembly;
- (I) Prescribe forms for the disclosure and registration of information as provided in this chapter;
- (J) Render advisory opinions with respect to the provisions of this chapter;
- (K) Advise any individual whose acts are the subject of a complaint to the board and consult with such individual early in the process; and
- (L) Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter.

IV. PERSONS SUBJECT TO THE JURISDICTION OF THE BOARD¹¹

- (A) The Board shall be the reviewing authority in the case of an elected official, appointed official, the borough manager, the borough clerk, the borough attorney, or the superintendent.
- (B) In the case of a borough employee supervised by the borough manager, the borough manager or designee shall be the reviewing authority.

V. COMPLAINTS

- (A) The Board may not investigate and shall not accept complaints filed against persons who do not come under the Board's jurisdiction pursuant to the COI Code.
- (B) *Form and Place of Filing:*¹²
 - (1) Any person may file a complaint against any elected or appointed official alleging a violation of the provisions of the COI Code.
 - (2) All complaints under the COI Code shall be made in writing signed by the complainant affirming that to the best of that person's knowledge, information, and belief formed after reasonable inquiring, the facts stated in the complaint are true.
 - (3) The complainant shall identify the COI Code section that was allegedly violated or how the complainant believes the COI Code was violated, a description of the evidence, and the name of the complainant and contact information.
 - (4) A complaint shall be submitted to the borough clerk. If the complaint is regarding the borough clerk, the complaint shall be submitted to the borough attorney.

¹¹ COI Code 2.20.120

¹² COI Code 2.20.110

- (5) Upon receipt, the complaint shall be dated and numbered and a copy shall be forwarded to the borough attorney who shall review the complaint to determine whether it contains the required information, is in the required form, and alleges facts which, if found to be true, could form the basis for a violation of this chapter. Upon a determination that the complaint satisfies these requirements, the borough attorney shall forward the complaint to the Board.
- (6) The Board shall not accept or act upon any anonymous complaint.

(C) *Time of Filing:*

A complaint must be filed within one (1) year of the alleged violation.

(D) *Initial Review by Attorney*

- (1) Upon receipt of a complaint, the attorney shall promptly conduct an initial review of the same to determine the following:
 - (a) whether the complaint contains all of the relevant information required by the COI Code including, without limitation, a concise statement of the nature of the complaint and specific facts indicating that a violation of the COI Code has occurred;
 - (b) whether the person against whom the complaint has been filed is a covered official subject to Board action;
 - (c) whether the complaint has been timely filed (within one (1) year of when the complainant knew or should have known of the conduct complained of);
 - (d) whether a reasonable person would conclude that the specific facts alleged indicate a probable violation of the COI Code of the type and magnitude justifying a full investigation by the Board.
- (2) If during the initial review, the attorney determines the facts alleged in the complaint, even if proven, would not constitute a violation of the COI Code, the borough attorney shall notify the borough clerk of the deficiencies, and the borough clerk shall reject the complaint and notify the complainant of the rejection and the reason(s) for the rejection.
- (3) If after the initial review, the attorney determines that the complaint is against a person who is not a covered official subject to the COI Code and the Board therefore lacks jurisdiction over that individual, the attorney shall notify the borough clerk, and the borough clerk shall reject the complaint and notify the complainant of the rejection and the reason(s) for the rejection.

- (4) If the attorney believes that the complaint has not been timely filed pursuant to the COI Code, or that a reasonable person would conclude that the specific facts alleged, together with any relevant information acquired during the limited investigation, if any, do not indicate a probable violation of the COI Code of the type and magnitude justifying a full investigation by the Board, or that the Board should exercise its discretion and decline to accept or investigate the complaint for one or more of the reasons set out in the COI Code, then the attorney shall recommend appropriate action.
- (5) If the attorney determines the facts alleged, if proven, would constitute a violation of the COI Code, the attorney shall forward the complaint to the Board.¹³
- (6) The attorney shall include in the recommendation to the Board, and shall advise the Board, if he is aware of any of the following:
 - (a) the individuals and conduct complained of have already been the subject of a resolved or ongoing complaint, or
 - (b) the conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, state, or local agencies or authorities including, but not limited to, law enforcement authorities.
 - (c) the official carried out an action in accordance with a borough attorney's advisory opinion if the official fully disclosed all relevant facts reasonably necessary to the issuance of the advice.¹⁴
- (7) All complaints not disposed of as set forth above shall proceed to the investigation and final disposition stages described below.

(E) *Board Action on Complaint and Conduct of Investigation:*

- (1) Upon receipt of a complaint, the board shall convene at its next regularly scheduled meeting, or sooner, as determined by the board chair, to schedule the investigation and hearing on the complaint.¹⁵
- (2) The board shall give the respondent and the complainant notice with a copy of the complaint and an opportunity to present written information or oral testimony, including the names of any witnesses they wish to have interviewed by the board. The investigation may include use of an investigator designated by the board to garner relevant evidence for consideration by the board in its investigation. Any hearing by the board for investigation and decision on the complaint shall be conducted at least ten (10) days after notice has been provided to the respondent. The board's

¹³ COI Code 2.20.110 (d)

¹⁴ COI Code 2.20.150

¹⁵ COI Code 2.55.040 (a)

investigation shall be conducted at a regular or special meeting, none of which may be conducted in executive session subject to the Open Meetings Act.¹⁶

- (3) Such investigation may involve, without limitation, one or more of the following:
 - (a) Any member may administer oaths and receive testimony from witnesses at a meeting of the Board.¹⁷
 - (b) A request for more information, including, without limitation, documentation or tangible evidence, from the complainant, the respondent, or the assembly or board with which the official is associated.
 - (c) A request for resources, pursuant to applicable laws and other requirements, including the assistance of a private investigator; provided, however, such request shall be subject to availability of funds appropriated for that purpose by the Borough Assembly.
 - (d) Such interviews with the complainant, respondent, other proper officials, and anyone else the Board deems necessary to gather the facts and information needed to investigate and resolve the complaint in a timely and complete manner.

- (4) The investigative hearing may be conducted as follows:
 - (a) The Chair introduces the complaint "This is the time and place for the investigative hearing on Board of Ethics Case Number XXXX-XX, a complaint alleging a violation of KGB Code Section X.XX.XXX for _____."
 - (b) Complainant enters the complaint and attached documents into the record as exhibits and provides summary of complaint. If complainant declines to participate, the chair will enter the complaint and attached documents into the record and read a summary of the complaint aloud.
 - (c) Complainant may offer any additional evidence or testimony for consideration by the Board.
 - i. Clerk issues oath to witnesses
 - ii. The Board may ask Complainant and complainant's witnesses questions
 - iii. The respondent may ask the complainant and complainant's witnesses questions
 - iv. The complainant may ask redirect questions of its witnesses or provide testimony on redirect
 - (d) Board enters any additional documents provided in response to Board requests as exhibits
 - (e) Board inquires of witnesses requested by the Board
 - i. Clerk issues oath to witnesses
 - ii. Board asks questions of Board-requested witnesses

¹⁶ COI Code 2.55.040 (a)

¹⁷ COI Code 2.55.030 (a)

- iii. Respondent may ask questions of each Board-requested witness
 - iv. Complainant may ask questions of board requested witnesses
 - v. Board asks any additional follow up questions of Board-requested witnesses
- (f) Respondent presents any documents desired to be considered as evidence
- (g) Respondent presents any witnesses offered by Respondent
- i. Clerk issues oath to witnesses
 - ii. Respondent asks questions of respondent-requested witnesses
 - iii. Complainant may ask questions of any respondent offered witnesses
 - iv. Board asks questions of each respondent-requested witness
 - v. Respondent asks any additional follow up questions of respondent-requested witnesses
- (h) Rebuttal - Board seeks additional information
- i. asks additional questions of witnesses in rebuttal
 - ii. invites complainant to make closing remarks
 - iii. invites respondent to make closing remarks
 - iv. may postpone hearing to invite additional witnesses to testify or to seek additional documentary evidence
- (i) Board discussion, decision, and findings of fact – must include open session vote on the 3 questions in 2.55.040:
- i. Whether the board finds by a preponderance of the evidence one (1) or more violations within the jurisdiction of the board; and if so
 - ii. Whether the board recommends further administrative or remedial actions; and
 - iii. What specific sanctions, corrective actions or referrals, if any, the board recommends¹⁸
- (5) The Board may decline to accept or investigate a complaint if it determines that:
- (a) the individuals and conduct complained of have already been the subject of a resolved or ongoing complaint, or
 - (b) the conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, state, or local agencies or authorities including, but not limited to, law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed pursuant to the COI Code, the Board shall stay its complaint investigation pending final resolution of such other investigation.
 - (c) the official carried out an action in accordance with a borough attorney's advisory opinion if the official fully disclosed all relevant facts reasonably necessary to the issuance of the advice.¹⁹
- (6) Sanctions for Violations:²⁰

¹⁸ COI Code 2.55.040 (a)

¹⁹ COI Code 2.20.150

²⁰ COI Code 2.21.130

- (a) Any official found by the Board to have violated any of the provisions of the COI Code or to have furnished false or misleading information shall be subject to appropriate sanctions under the COI Code
- (b) Any municipal contractor who fails to provide documents or information requested by the Board shall be subject to cancellation of contract rights as determined by the appropriate entity.

(F) *Final Report and Recommendations.*

- (1) Upon completion of the investigation, the Board shall issue a written report which shall include:²¹
 - (a) A summary of the investigation;
 - (b) A complete record of any proceedings, including but not limited to any testimony heard by the Board; and
 - (c) Recommendations for such administrative or legal action it deems appropriate.
- (2) Action on complaints and investigations shall be completed within one hundred twenty (120) days of the filing of the complaint. By a majority vote the Board may extend the completion date for an additional sixty (60) days.²²
- (3) Upon completion of the report, the Board shall furnish a copy to the complainant, the person under investigation, and the borough mayor, borough assembly, school superintendent or school board depending on the entity having jurisdiction.²³

VI. PENALTIES FOR MISCONDUCT:²⁴

- (A) If an official has been found to have violated the COI Code the borough assembly, or the school board in the case of a school board member or the superintendent:
 - (1) Shall order the official in writing to stop engaging in any official action related to the violation;
 - (2) May order divestiture, restitution, or forfeiture;
 - (3) May take disciplinary action, including reprimand, or in the case of the borough manager, borough clerk, borough attorney or superintendent, up to and including discharge.

²¹ COI Code 2.55.040 (b)

²² COI Code 2.55.040 (c)

²³ COI Code 2.55.040 (d)

²⁴ COI Code 2.20.160

- (B) If a former official has been determined to have violated the COI Code, the borough assembly or school board may:
- (1) Issue a public statement of findings, conclusions, and recommendations; and
 - (2) Request the borough attorney to exercise all legal and equitable remedies available to the Borough to seek whatever relief is appropriate.
- (C) The above penalties shall be exclusive penalties for violation of the COI Code, but shall not affect the right of the Borough to seek civil or contractual remedies against any such official and shall not limit prosecution or action under any other law or policy. The jurisdiction of the board of ethics is non-exclusive and is concurrent with the courts. If the conduct appears to constitute a violation of state criminal laws the matter shall also be referred to the state district attorney for prosecution.
- (D) *Judicial Penalties.*²⁵

Any person found by a court to be guilty of knowingly violating any of the provisions of the COI Code or of furnishing false, misleading or incomplete information to the investigation entity with the intent to mislead, upon conviction thereof, shall be punished by a fine of up to one thousand dollars (\$1,000).

- (E) *Invalid Actions.*²⁶
- (1) Any contract negotiated, entered into, or performed in violation of any of the provisions of the Code shall be voidable as to the borough and/or the school district but only by action of the borough assembly or school board.
 - (2) Any permit, license, ruling, determination, or other official action of an agency applied for or in any other manner sought, obtained or undertaken where the beneficiary knew or should have known of a violation of any of the provisions of the Code may be invalidated by the borough assembly or school board, as applicable.

VII. BOARD ADVISORY OPINIONS²⁷

- (A) Upon the written request of a borough official, the Board of Ethics shall issue an advisory opinion interpreting the COI Code. The requester shall supply any additional information requested by the Board in order to issue the opinion. The request shall be on a form provided by the Borough Clerk and shall be submitted to the Borough Clerk's Office.

²⁵ COI Code 2.20.170

²⁶ COI Code 2.20.180

²⁷ Similar to Borough attorney's advisory opinions. See COI 2.20.140

- (B) The subject of the request for advisory opinion shall be the requestor only, and not another borough official. A borough official may not request an advisory opinion regarding another borough official.
- (C) The request shall be submitted at least five (5) days prior to a meeting of the Board in order to be considered at that meeting.
- (D) The Board may reconsider, revoke, or modify an advisory opinion at any time.
- (E) A request for advice made under subsection (A) of this section is confidential to the extent permitted by law unless the subject of the opinion waives confidentiality and authorizes in writing the release of the request or the full text of the advisory opinion.
- (F) The Board shall make the advisory opinion issued under this section available for public inspection with sufficient deletions to prevent disclosure of the persons whose identifies are confidential under subsection (E) of this section.

Approved and adopted by the Board of Ethics on December 19, 2007.

Approved by the Borough Assembly on January 7, 2008.

Amended by adoption of the following ordinances of the Borough Assembly:

Ordinance 1538-A, November 23, 2009

Ordinance 1607, October 3, 2011

Ordinance 1625, May 5, 2012

Ordinance 1647, December 17, 2012

Ordinance 1691, December 2, 2013

Amended and adopted by the Board of Ethics on November 6, 2013.

Approved by the Borough Assembly on December 2, 2013.