

TITLE 5
ADMINISTRATION

Chapter 5.30—Assembly

Article 5.37—Conflict of Interest*

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5.37.010. Declaration of policy. It is declared that:

- (a) 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;
- (b) A code of ethics for the guidance of the borough elected and appointed officials and borough employees will:
- (1) Discourage the borough elected and appointed officials and borough employees from acting upon personal or financial interests in the performance of their public responsibilities;
 - (2) Improve standards of public service; and
 - (3) Promote and strengthen the faith and confidence of the people of this borough in public officials and employees;
- (c) 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;
- (d) 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;
- (e) 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) 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;
 - (2) People who serve as elected or appointed officials or borough employees should retain the right to interests of a financial nature;
 - (3) 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.
- (f) Unethical conduct is prohibited. However, there is no impropriety if, as to a specific matter, an elected or appointed official or borough employee:
- (1) 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
 - (2) Performs some duty or has some influence which would have insubstantial or conjectural effect on the matter.

(g) 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;

(h) 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

(i) 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.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.015. Scope and Applicability. Sections 5.37.010 through 5.37.020 and 5.37.310 through 5.37.340 of this chapter apply to all officials and employees as defined in this chapter. Sections 5.37.030 through 5.37.200 apply to officials as defined in this chapter. Sections 5.37.210 through 5.37.300 apply to employees as defined in this chapter.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.020. Definitions.

(a) In this chapter, unless the context requires otherwise,

(1) *Benefit* means anything that is to a person's advantage or self interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

(2) *Business* includes a corporation, company, firm, partnership, sole proprietorship, trust or foundation, or any other individual or entity carrying on a business, whether operated for profit or nonprofit;

(3) *Borough* means the Ketchikan Gateway Borough, its assembly, administration, or the Ketchikan Gateway Borough School District, its administration or school board.

(4) *Child* includes a biological child, an adoptive child, and a stepchild;

(5) *Compensation* means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another;

(6) *Confidential information* means information exempt from disclosure under section 5.90.035;

(7) *Employee* means a permanent, probationary, seasonal, temporary, or casual employee, whether appointed, executive/administrative/professional, or classified, and does not include the borough mayor or assembly members or the borough manager, borough clerk or borough attorney. Employee does not include employees of the school district;

- (8) *Engaging in business* means submitting a written or oral proposal to supply goods, services or other things of value, or furnish goods, services or other things of value, for consideration.
- (9) *Financial interest* means:
- a. An interest held by an elected or appointed borough official or an employee, or an immediate family member of such official or employee, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;
 - b. Holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management;
- (10) *Gain* includes actual or anticipated gain, benefit, profit, or compensation;
- (11) *Immediate family member* means:
- a. The spouse of the person;
 - b. A regular member of the person's household;
 - c. A child, including a stepchild and an adoptive child, of the person and the spouse of any such child;
 - d. A parent, sibling, grandparent, aunt, or uncle of the person; and
 - e. A parent or sibling of the person's spouse;
- (12) *Official* means a person who holds elective office under the ordinances of the borough, who is appointed to fill a vacancy in elective office, or who is a member of a board, commission or committees of the borough or school district whose appointment is subject to confirmation by the borough assembly or school board. It also includes the borough manager, borough clerk, borough attorney, and the school superintendent.
- (13) *Official action* means a recommendation, decision, approval, disapproval, or other similar action, or withholding action where the person has a duty to act;
- (14) *Organization* includes a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit;
- (15) *Parent* includes a biological parent, an adoptive parent, and a stepparent;
- (16) *Person* includes a natural person, a business, and an organization;
- (17) *Source of income* means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-

employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, an immediate family member, or a combination of them, holds a controlling interest in, the “source” is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

- (18) *Substantial financial interest* means an interest that will result in immediate financial gain or financial gain which will occur in the reasonably foreseeable future. An interest is not substantial if it would not reasonably be expected to affect the actions or judgments of the official or employee concerned.

(b) *Construction.* This chapter shall be liberally construed to protect the public interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for borough officials and employees.

(Ord. No. 1366 Substitute, §1, 11-21-05)

RESTRICTIONS ON OFFICIALS

5.37.030. Prohibited acts.

(a) *Official action.* An official shall not participate in any official action in which he has a substantial financial interest. Consistent with Section 5.37.080 of the KGB Code, an official who is a voting member of the borough assembly, school board or a board, commission or other agency shall publicly disclose any existing or potential financial interest in any matter before the borough assembly, board, commission or agency before debate or vote upon the matter and may not participate in the debate or vote upon the decision unless the financial interest is determined to be not substantial. The question of whether an official who is a voting member of a body has an existing or potential substantial financial interest in a matter pending before the body may be raised by the chair or any other member of the body. No official may testify before the borough assembly, board, commission or other agency without first disclosing any financial interest which the official has in the subject of the testimony.

(b) *Business prohibition.* No official may engage in business with the borough when that person has had substantial involvement in planning, recommending or otherwise supporting the project or transaction at issue. No official shall attempt to influence the borough’s selection of any bid or proposal, or the borough’s conduct of business, in which the official has a financial interest. Newly elected or appointed officials who have preexisting contracts with the borough may fulfill the terms and conditions of such contracts without penalty. Officials may engage in business with the borough so long as that activity complies with both this subsection and section 5.37.040.

(c) *Use of office for personal gain.* No official shall seek or hold office or position for the purpose of obtaining anything of value for himself, his immediate family or a business that he owns or in which he holds an interest or for any matter in which he has a financial interest. This prohibition shall not apply to the receipt of authorized remuneration for that office or position.

(d) *Representing private interests.* No official shall represent, for compensation, or assist those representing private business interests before the borough assembly, administration, or any borough board, commission or agency. Nothing herein shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of borough government; from requesting explanations or additional information on behalf of such constituents; or from making

routine contacts with borough staff in the normal course of borough business such as applications for zoning permits, sales tax preparation or any other borough license or permit. No official may solicit a benefit or anything of value or accept same from any person for having performed this service.

(e) *Confidential information.* No official may disclose information he knows to be confidential concerning the property, government, or affairs of the borough unless authorized or required by law to do so.

(f) *Outside activities.* The borough manager, borough attorney, borough clerk and the superintendent of schools may not engage in business or accept employment with, or render services for, a person other than the borough or hold an office or position where that activity or position is incompatible with the proper discharge of their duties or would tend to impair their independence of judgment in performing his borough duties. A person who holds an elected borough office shall not be eligible for employment with the borough, during their term of office. An exception may be made with the approval of four or more members of the borough assembly.

(g) *Gratuities.* No official shall accept a gratuity from any person engaging in business with the borough or having a financial interest in a decision pending with the borough. No official shall give a gratuity to another official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a borough official. Any official who accepts a gift having a value in excess of fifty dollars (\$50) shall report such gift to the borough clerk if the official may take or withhold action that affects the giver. The borough clerk shall maintain the report in a public file. As used in this section, "gift" includes any series of gifts from the same donor within any twelve (12) month period, other than meals reciprocated by the official.

This subsection does not prohibit accepting:

- (1) A meal;
- (2) Discounts or prizes that are generally available to the public or large sections thereof;
- (3) Gifts presented by employers in recognition of meritorious service or other civic or public awards;
- (4) A candidate for public office accepting campaign contributions;
- (5) An occasional nonpecuniary gift of insignificant in value;
- (6) Any gift which would have been offered or given to the person if the person were not an official.

(h) *Use of borough property.* No official may request or permit the use of borough vehicles, equipment, materials or property for a non-borough purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the borough assembly.

(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.

(k) *Influencing another elected official's vote.* An elected official may not attempt to influence another elected official's vote or position on a particular item through contact with an elected official's employer or by threatening financial harm to another elected official.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1417, §1, 1-2-07; Ord. 1448, §3, 9-4-07)

5.37.040. Business dealings with borough. Subject to all other applicable ordinances, an entity disclosed by an official under subsection (a)(6) of this section may sell to, barter with, or buy from the borough only as provided below:

(a) Sales to the borough:

- (1) A sale to the borough for five hundred dollars (\$500) or less is permitted if it is at a price prevailing in the community.
- (2) A sale to the borough following competitive bidding purchasing procedures as required in Code Chapter 41.30 is permitted if:
 - a. An invitation to bid is published requesting sealed bids and the borough selects the bid which is the most advantageous to the borough; or
 - b. The procurement is by a request for proposals (RFP) process under which the borough assembly awards the contract to the respondent which is most advantageous to the borough; or
 - c. The procurement is a non-competitive, sole source, or emergency procurement and
 1. The borough assembly adopts a finding that such procurement method is justified, setting out the facts which support that finding and make procurement by the method the most advantageous to the borough and
 2. The borough assembly approves the award.
- (3) A sale to the borough for over \$500 and less than the amount required to follow the competitive bidding purchasing procedures as required in Code Chapter 41.30 is permitted if the sale amount is the lowest of the three (3) written quotes as obtained by borough staff.

- (4) Before a sale by an assembly member or the manager, attorney, or clerk, under subsection (a) for procurement by formal competitive sealed bids or competitive sealed proposals is allowed, notice of the proposed action shall be provided in writing to the borough clerk prior to submission of a bid or proposal. That notice shall be made available at the next borough assembly meeting.
- (5) At least once a quarter a report shall be furnished to the borough assembly listing the number of sales and total price.
- (6) In addition to filing the annual financial disclosure statement with the office of the borough clerk, as directed by the Alaska Public Offices Commission, officials shall, as changes occur, submit an updated statement to the borough clerk, of business entities in which the official has a financial interest as defined in the APOC financial disclosure statement. The Clerk or Manager may, where warranted by a particular procurement, inquire of an official regarding whether they have a substantial financial interest in a transaction.

(b) Purchase from the borough:

- (1) Purchase from, or barter exchange with, the borough for five hundred dollars (\$500) or less or equivalent value is permitted if it is at a price or rate prevailing in the community and such purchase or exchange is offered to the public; or
- (2) Purchase from or barter exchange with the borough for any amount or equivalent value is permitted if an invitation to bid is published requesting sealed bids and the borough selects the bid which is the most advantageous to the borough.

(c) For purposes of this section only, the term “official” does not include members of the School Board, or members of a board, commission, or committee of the Borough or School District whose appointment is subject to confirmation by the Borough Assembly or School Board.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1532, §1, 9-8-09; Ord. No. 1578, §1, 12-20-10)

5.37.050. Representation of assembly position.

(a) The borough mayor or any borough assembly member shall not falsely represent himself or herself as being the official authorized spokesperson for the borough assembly on a given issue.

(b) The borough mayor or any borough assembly member giving a personal opinion or speaking as an official spokesperson of the borough assembly on an issue shall not intentionally misrepresent the official position of the borough assembly for the purpose of obtaining a benefit or to induce an official action that occurs in reliance on the representation.

(c) The borough mayor or an borough assembly member making a public statement or otherwise taking a public position shall express only his or her personal opinion and shall not represent that he or she is speaking for the borough assembly or representing the position of the borough assembly unless a majority of the borough assembly has specifically authorized the borough assembly member or the borough mayor to serve as the official borough assembly spokesperson regarding that position.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.060. Surplus property. An official is prohibited from bidding upon, or otherwise obtaining, any property which is unneeded or surplus by the borough unless that official can

satisfactorily demonstrate to the borough manager, or borough assembly in the case of the borough manager, borough attorney, or borough clerk, that no reasonable conclusion could be made that the official possessed knowledge about the property which would not be readily obtainable or observable to a member of the general public.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.070. Aiding and abetting. It is a violation of this ordinance for an official to knowingly aid another official or employee in violation of this ordinance. Such aiding a violation will be considered misconduct on the part of such official.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.080. Disclosures of conflicts by officials.

(a) An official who is involved in a matter that may result in a violation of sections 5.37.010—5.37.200 of the KGB Code shall disclose the matter on the public record and ask to be excused from the discussion and official action on that matter. The presiding officer, or any other member of the body may raise the issue of whether participation in official action on a matter would be a potential violation of section 5.37.010—5.37.200 by another official and seek a ruling of the presiding officer. The presiding officer shall determine whether the member's involvement would violate sections 5.37.010—5.37.200. If the presiding officer determines that a violation would exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter. The presiding officer's decision may be overridden by a majority vote of the body.

(b) A borough assembly member, school board member, or a member of any board or commission may, whenever practical, request guidance, which may include a written advisory opinion from the borough attorney, when determining whether a member is involved in a matter that may result in a violation of sections 5.37.010—5.37.200 of the KGB Code.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1417, §2, 1-2-07)

5.37.090. 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.

(b) No current or former elected borough official may be employed by the borough for a period of six (6) months after leaving office.

(c) For purposes of this section, voting on an appropriation shall not in and of itself constitute substantial participation in a matter.

(d) This section does not prohibit the borough or school district from contracting with a former official to act on a matter on behalf of the borough or school district.

(e) In this section, "matters" includes a case, proceeding, application, contract or determination.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.100. Persons who may file complaints.

(a) Any person may file a complaint against any elected or appointed official alleging a violation of the provisions of this chapter. All complaints under this chapter 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 inquiry, the facts stated in the complaint are true. The complainant shall identify the

KGB Code section that was allegedly violated or how the complainant believes the KGB Code was violated, a description of the evidence, and the name of the complainant and contact information. If the complainant desires to remain anonymous during the initial review of the complaint, the complaint shall be verified by a number and the clerk shall maintain a confidential record of the name and contact information associated with the complaint number. If the Complaint is determined to assert facts which, if true, could constitute a violation of this chapter, the complaint, and the complainant's identity shall become public information.

- (b) A complaint must be filed within one (1) year of the alleged violation.
- (c) 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. The identity of the complainant may be confidential during the initial review and known only to either the borough clerk or borough attorney.
- (d) 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 entity authorized to address the complaint under Section 5.37.110 of this Chapter. If the complaint fails to meet one or more of these requirements, 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. A rejected complaint may not be re-filed sooner than 10 days after the date of rejection. Rejection of a complaint does not preclude other remedies a complainant may wish to pursue, including but not limited to, an original action in the appropriate state court. If the complaint is about the Borough Attorney, the Borough Clerk shall conduct the review and provide notice of any deficiencies as called for in this subsection.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1538A, §1, 11-23-09)

5.37.110. Authority to address complaints. In the case of an elected official, appointed official, the borough manager, the borough clerk, or the borough attorney, or the superintendent, the board of ethics shall be the reviewing authority. In the case of a borough employee supervised by the borough manager, the borough manager or designee shall be the reviewing authority.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.120. Board of ethics established; appointment and qualifications of members.

- (a) There is hereby created and established the board of ethics. The board shall consist of three regular members and two alternate members appointed by the mayor and confirmed by the assembly. Regular and alternate members of the board shall not:
 - (1) Hold other elected office, appointed position with the borough, public or political party office;
 - (2) Endorse or engage in any political or campaign activity on behalf of any candidate for public office; and
 - (3) Be an employee of the borough or school district or any subdivision thereof.

- (b) 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. 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.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. 1448, §1, 9-4-07)

5.37.130. Powers and duties of board of ethics. In addition to other powers and duties specifically mentioned in this chapter, the board of ethics shall have the power and duty to:

- (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;
- (g) Recommend such legislative action as it may deem appropriate to effectuate the policy of this chapter;
- (h) Carry out such educational programs as it deems necessary to effectuate the policy and purpose of this chapter;
- (i) 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;
- (j) Prescribe forms for the disclosure and registration of information as provided in this chapter;
- (k) Render advisory opinions with respect to the provisions of this chapter;
- (l) Advise any individual whose acts are the subject of a complaint to the board and consult with such individual early in the process; and
- (m) Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.140. Meetings and records of board of ethics.

- (a) Any regular member may administer oaths and receive testimony from witnesses at a meeting of the board of ethics. Three regular members of the board shall constitute a quorum. A two-thirds [2/3] vote of the three regular members shall be necessary to take any action.
- (b) 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.

(c) Alternate members, unless serving in the place of a regular member, shall not participate in debate or vote upon actions of the board.

(d) The board of ethics shall keep minutes of its proceedings, showing the vote of each regular member upon every question, and shall also keep records of its investigations and other official actions.

(e) 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.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. 1448, §2, 9-4-07)

5.37.150. Action on complaints and conduct of investigations.

(a) Upon receipt of a complaint, the board shall convene at its next regularly scheduled meeting, or sooner, as determined by the board chair, to investigate the complaint. The board shall give the respondent notice with a copy of the complaint and an opportunity to present written information or oral testimony, including the names of any witnesses the person wishes to have interviewed by the board. The investigation and any hearing on the complaint shall be conducted at least 10 days after notice has been provided to the respondent. The board's 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. The board shall vote in open session on these questions:

- (1) Whether the board finds by a preponderance of the evidence one or more violations within the jurisdiction of the board; and
- (2) Whether the board recommends further administrative or remedial actions; and
- (3) What specific sanctions, corrective actions or referrals, if any, the board recommends.

(b) At the conclusion of an investigation, the board shall prepare a written report including:

- (1) A summary of the investigation;
- (2) A complete record of any proceedings, including but not limited to any testimony heard by the board; and
- (3) Recommendations for such administrative or legal action it deems appropriate.
- (4) If, after completion of the investigation, the board does not find a violation under this chapter, the board shall prepare and release a statement of closure listing the respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the board in whole or in part, and the date of board closure.
- (5) If the board finds that a violation of this chapter has occurred it shall complete the report for consideration in accordance with subsection (d) of this section.

(c) 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.

(d) 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.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1538A, §2, 11-23-09)

5.37.160. Sanctions for violation.

(a) Any official found by the board of ethics to have violated any of the provisions of this chapter or to have furnished false or misleading information shall be subject to appropriate sanctions under Section 5.37.200 and 310 of the KGB Code.

(b) Any municipal contractor who fails to provide documents or information requested by the board of ethics shall be subject to cancellation of contract rights as determined by the appropriate entity.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.180. Borough attorney's advisory opinions.

(a) Upon the written request of a borough official, the borough attorney shall issue an advisory opinion interpreting this chapter. The requester shall supply any additional information requested by the borough attorney in order to issue the opinion.

(b) The borough attorney may offer oral advice if delay would cause substantial inconvenience or detriment to the requester. Within two working days after providing the oral advice, the borough attorney shall provide a brief written statement summarizing its contents.

(c) The borough attorney may reconsider, revoke, or modify an advisory opinion at any time.

(d) 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.

(e) The borough attorney shall make the advisory opinion issued under this section available for public inspection with sufficient deletions to prevent disclosure of the persons whose identities are confidential under subsection (d) of this section.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.190. Immunity. A borough official is not liable under this chapter for an action carried out in accordance with the advice of the borough attorney issued under section 5.37.180 if the official fully disclosed all relevant facts reasonably necessary to the issuance of the advice.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.200. Violations; penalties for misconduct.

(a) If an official has been found to have violated this chapter 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;

(b) If a former official has been determined to have violated this chapter, 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 this chapter, 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.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1538A, §3, 11-23-09)

RESTRICTIONS ON EMPLOYEES

5.37.210. Prohibited acts.

(a) *Official action.* An employee shall not participate in any official action in which he has a financial interest. No employee may testify before the borough assembly, board, commission or other agency without first disclosing any financial interest which the employee has in the subject of the testimony.

(b) *Business prohibition.* No employee may engage in business with the borough when that person has had substantial involvement in planning, recommending or otherwise supporting the project or transaction at issue. No employee shall attempt to influence the borough's selection of any bid or proposal, or the borough's conduct of business, in which the employee has a financial interest. Newly hired employees who have preexisting contracts with the borough may fulfill the terms and conditions of such contracts without penalty. Employees may engage in business with the borough so long as that activity complies with both this subsection and Section 5.37.220 of the KGB Code.

(c) *Use of office for personal gain.* No employee shall seek or hold a position of employment for the purpose of obtaining anything of value for himself, his immediate family or a business that he owns or in which he holds an interest or for any matter in which he has a financial interest. This prohibition shall not apply to the receipt of authorized remuneration for that office or position.

(d) *Representing private interests.* No employee shall represent, for compensation, or assist those representing private business or personal interests before the borough assembly, administration, or any borough board, commission or agency.

(e) *Confidential information.* No employee may disclose information he knows to be confidential concerning the property, government, or affairs of the borough unless authorized or required by law to do so.

(f) *Outside activities.* In addition to the limitations in KGB Code Section 30.30.021, an employee may not engage in business or accept employment with, or render services for, a person other than the borough or hold an office or position where that activity or position is incompatible with the proper discharge of his borough duties or would tend to impair his independence of judgment in performing his borough duties. This prohibition shall include but not be limited to the following activities:

- (1) If during the term of employment, a borough employee runs and is elected to the office of borough mayor or borough assembly, the employee must resign their employment in order to take office.
- (2) A borough employee shall not be eligible for appointment to a borough board that has oversight over the department of employment of that employee.

(g) *Gratuities.* No employee shall accept a gratuity from any person engaging in business with the borough or having a financial interest in a decision pending with the borough. No employee shall give a gratuity to another employee for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a borough employee. Any employee who accepts a gift having a value in excess of fifty dollars (\$50) shall report such gift to the employee's supervisor if the employee may take or withhold action that affects the giver. The supervisor shall forward a copy of the report to the borough manager who shall maintain the report in a public file. As used in this section, "gift" includes any series of gifts from the same donor within any 12-month period, other than meals reciprocated by the employee.

This subsection does not prohibit accepting:

- (1) A meal;
- (2) Discounts or prizes that are generally available to the public or large sections thereof;
- (3) Gifts presented by employers in recognition of meritorious service or other civic or public awards;
- (4) A candidate for public office accepting campaign contributions;
- (5) An occasional nonpecuniary gift of insignificant in value;
- (6) Any gift which would have been offered or given to the person if the person were not an employee.

(h) *Use of borough property.* No employee may request or permit the use of borough vehicles, equipment, materials or property for a non-borough purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the borough manager.

(i) *Political activities, limitations of individuals.* Employees 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 employees 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.

5.37.220. Business dealings with borough. Subject to all other applicable ordinances, an employee may sell to, barter with, or buy from the borough only as provided below:

(a) Sales to the borough:

- (1) A sale to the Borough for five hundred dollars (\$500) or less is permitted if it is at a price prevailing in the community.
- (2) A sale to the borough at any price is permitted if:
 - a. At least three (3) written quotes are obtained by the borough manager and the borough manager selects the quote which is the most advantageous to the borough; or
 - b. An invitation to bid is published requesting sealed bids and the borough selects the bid which is the most advantageous to the borough; or
 - c. The procurement is by a request for proposals (RFP) process under which the borough awards the contract to the respondent which is most advantageous to the borough; or
 - d. The procurement is a non-competitive, sole source, or emergency procurement and
 1. The borough manager makes a written finding that such procurement method is justified, setting out the facts which support that finding and make procurement by the method the most advantageous to the borough and
 2. The borough approves the award.

(b) Purchase from the borough:

- (1) Purchase from, or barter exchange with, the borough for five hundred dollars (\$500) or less or equivalent value is permitted if it is at a price or rate prevailing in the community and such purchase or exchange is offered to the public; or
- (2) Purchase from or barter exchange with the borough for any amount or equivalent value is permitted if an invitation to bid is published requesting sealed bids and the borough selects the bid which is the most advantageous to the borough.

5.37.230. Surplus property. An employee is prohibited from bidding upon, or otherwise obtaining, any property which is unneeded or surplus by the borough unless that employee can satisfactorily demonstrate to the borough manager that no reasonable conclusion could be made that the employee possessed knowledge about the property which would not be readily obtainable or observable to a member of the general public.

5.37.240. Aiding and abetting. It is a violation of this ordinance for an employee to knowingly aid another official or employee in violation of this ordinance. Such aiding a violation will be considered misconduct on the part of such employee.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.250. Declaration of potential violations by public employees.

(a) An employee who is involved in a matter that may result in violation of sections 5.37.010—300 shall:

- (1) Refrain from taking any official action relating to the matter until a determination is made under this section;
- (2) Immediately disclose the matter in writing to the designated supervisor.

(b) The employee's supervisor shall make a written determination whether an employee's involvement violates sections 5.37.010—300. If the supervisor determines that a violation could exist or will occur, the supervisor shall:

- (1) Reassign duties to cure the employee's potential violation to the extent practicable; or
- (2) Direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) The supervisor may request guidance from the borough attorney when determining whether a public employee is involved in a matter that may result in a violation of sections 5.37.010—300.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.260. Post-employment restrictions.

(a) No former employee shall, for a period of six (6) months after the termination of the term of office or employment, 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 employee participated personally and substantially through the exercise of official action.

(b) This section does not prohibit the borough or school district from contracting with a former employee to act on a matter on behalf of the borough or school district.

(c) In this section, "matters" includes a case, proceeding, application, contract or determination.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.270. Persons who may file complaints.

(a) Any person may file a complaint against any employee alleging a violation of the provisions of this chapter. All complaints under this chapter 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 inquiry, the facts stated in the complaint are true. The complainant shall identify the KGB Code section that was allegedly violated or how the complainant believes the KGB Code was violated, a description of the evidence, and the name of the complainant and contact information.

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

(c) A complaint shall be submitted to the borough manager or designee. Upon receipt, the borough manager or designee shall date and number the complaint and shall act on the complaint in accordance with this chapter.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.280. Action on complaints and conduct of investigations.

(a) The borough manager or designee shall review the complaint in order to determine if further action on the complaint is warranted. If the borough manager or designee determines the facts alleged in the complaint, even if proven, would not constitute a violation of this chapter, the borough manager shall without further action return the complaint to the complaining party. If the borough manager determines the facts alleged, if proven, would constitute a violation of this chapter, however, the respondent shall be given notice with a copy of the complaint and an opportunity to present written or oral information regarding the matter, including the names of any witnesses the person wishes to have interviewed by the borough manager.

(b) At the conclusion of an investigation, the borough manager or designee shall prepare a written report including:

- (1) A summary of the investigation; and
- (2) A report of such administrative or legal action deemed appropriate.

(c) Upon completion of the report, the borough manager or designee shall furnish a copy to the complainant and the person under investigation.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.290. Sanctions for violation.

(a) Any employee found by the borough manager or designee to have violated any of the provisions of this chapter, or to have furnished false or misleading information, shall be subject to employment sanctions, up to and including discharge, as determined by the borough manager or designee under Section 5.37.300 of the KGB Code.

(b) Any municipal contractor who fails to provide documents or information requested by the borough manager or designee shall be subject to cancellation of contract rights as determined by the borough manager.

(c) No person may knowingly disclose to another person or otherwise make public the content of a complaint filed with the borough manager under this chapter until the borough manager has first reviewed that complaint, determined that the facts alleged under that complaint, if proven, would constitute a violation of this chapter, and given a copy of the complaint to the respondent. After notice and hearing, the borough manager may refer a person found in violation of this subsection to the borough attorney for prosecution under the KGB Code.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.300. Violations; penalties for misconduct.

(a) If an employee has been found to have violated this chapter, the borough manager:

- (1) Shall order the employee 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, demotion, suspension, or dismissal. This does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement.

(b) If a former employee has been determined to have violated this chapter, the borough manager 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 this chapter, but shall not affect the right of the borough to seek civil or contractual remedies against any such employee and shall not limit prosecution or action under any other law or policy.

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1538A, §4, 11-23-09)

GENERAL PROVISIONS

5.37.310. Judicial penalties. Any person found by a court to be guilty of knowingly violating any of the provisions of this chapter or of furnishing false, misleading or incomplete information to the investigating entity with the intent to mislead, upon conviction there of, shall be punished by a fine of up to one thousand dollars (\$1,000).

(Ord. No. 1366 Substitute, §1, 11-21-05; Ord. No. 1607, §2, 10-3-11)

5.37.320. Invalid actions.

(a) Any contract negotiated, entered into, or performed in violation of any of the provisions of this chapter shall be voidable as to the borough and/or the school district but only by action of the borough assembly or school board.

(b) 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 this chapter may be invalidated by the borough assembly or school board, as applicable.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.330. Relationship to other laws. The procedures and penalties provided in this chapter are supplemental and do not limit either the power of an agency to otherwise discipline officials or employees or to take appropriate administrative action to adopt more restrictive rules. This chapter is intended to replace the common law regarding conflicts of interest with respect to borough elected officials and employees. Other than superseding the common law, nothing in this chapter is intended to repeal or is to be construed as repealing in any way the provisions of any other law or ordinance.

(Ord. No. 1366 Substitute, §1, 11-21-05)

5.37.340. Severability. The invalidity of any section, subsection, provision, clause or portion of this chapter, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

(Ord. No. 1366 Substitute, §1, 11-21-05)

* **Editor's note**—Section 1 of Ord. No. 1366 Substitute, adopted November 21, 2005, amended this chapter to read as herein set out. Formerly, this chapter consisted of §§5.37.010, 5.37.020, 5.37.030, 5.37.040, 5.37.050, 5.37.060, 5.37.070, 5.37.080, 5.37.090, 5.37.100, 5.37.110, 5.37.120, 5.37.130, adopted by Ord. No. 970, §3, 5-20-96 and amended by Ord. No. 1014, §1, 2-3-97 and Ord. No. 1230, §1, 9-23-02.