



CITY OF
BAINBRIDGE ISLAND

ETHICS BOARD
REGULAR MEETING
MONDAY, JULY 15, 2019
6:30 PM – 8:00 PM
COUNCIL CHAMBERS
280 MADISON AVENUE NORTH
BAINBRIDGE ISLAND, WA 98110

AGENDA

MEMBERS: SUZANNE KEEL-ECKMANN, CHAIR
INGRID BILLIES JENNIFER HODGES
MARADEL GALE BRIAN STRULLY

COUNCIL LIAISON: JOE DEETS

CITY STAFF: ROBBIE SEPLER

1. CALL TO ORDER – 6:30 PM
2. CHANGES OR ADDITIONS TO AGENDA
3. DISCLOSURES OF CONFLICTS OF INTEREST
4. ACCEPTANCE OF MEETING NOTES – MAY 20, 2019
5. WELCOME NEW BOARD MEMBER – JENNIFER HODGES
6. COMMUNICATIONS
7. PUBLIC COMMENT
8. CITY COUNCIL/ETHICS BOARD PROGRAM DISCUSSION
9. ITEMS FOR NEXT MEETING AGENDA
10. NEXT MEETING DATE: AUGUST 19, 2019
11. ADJOURNMENT – 8:00 PM

COBI ETHICS BOARD

Regular Meeting

Monday May 20, 2019

Minutes

1. Call to order. Meeting was called to order at 6:30 pm. Present were Suzanne Keel-Eckmann, Brian Strully, Scott Wilder, Maradel Gale. Deputy City Attorney Robbie Sepler and Councilmember Sarah Blossom, serving as liaison for City Council.
2. Changes or Additions to Agenda. Chair Suzanne Keel-Eckmann added an Executive Session with the Deputy City Attorney to occur as item 4 on the agenda.
3. Disclosure of conflicts of interest. None were reported.
4. The meeting was adjourned to the Planning Conference Room for the Executive Session.
5. The public meeting resumed at 7:00 pm.
6. The meeting notes for Monday, April 15, 2019 were approved as distributed.
7. Public comments were made by Peter Berg, James Friday, Chair of Race Equity Task Force and Erin Phillips.
8. The Ethics Board discussed, amended the draft and accepted a final version of 2019-02, filed by Bonnie McBryan regarding Councilmember Rasham Nassar. This will be forwarded to the complainant and respondent and to City Council through the City Clerk.
9. The Ethics Board discussed and amended the draft and accepted a final version of 2019-09, filed by Sal DeRosalia regarding Councilmember Joe Deets. The final opinion will be forwarded to the complainant and respondent and to City Council through the City Clerk.
10. The Ethics Board discussed the work plan for recommending changes to the Ethics Code. The initial drafting work will be done by Suzanne Keel-Eckmann, Scott Wilder, Mayor Kol Medina and Deputy City Attorney Robbie Sepler.
11. The next meeting of the Ethics Board is on Monday, June 17, 2019.
12. The meeting was adjourned at 8:15 pm.

Suzanne Keel-Eckmann, Chair 7/15/19



CITY OF
BAINBRIDGE ISLAND

Office of the City Attorney
Memorandum

Date: June 28, 2019

To: City Council

From: Robbie Sepler, Deputy City Attorney

Re: Procedure for City Council Review of Advisory Opinions and Determinations Issued by the Ethics Board Since January 1, 2018.

The purpose of this memo is to outline the procedure, under the City's Ethics Program, for City Council review of advisory opinions and determinations issued by the Ethics Board since January 1, 2018.¹ To the extent that the City's Ethics Program does not specify a procedure to follow, the absence of specific direction is noted and options are provided for Council consideration.

1. Advisory Opinions and Determinations Issued by the Ethics Board Since January 1, 2018

2019			
	Type	Specific Council Review Procedure?	Applicable Sections of this Memo
2019-09	Advisory Opinion	No	Section 2
2019-08	Advisory Opinion	No	Section 2
2019-07	(Withdrawn) ²	N/A	N/A
2019-06	Advisory Opinion	No	Section 2
2019-05	Advisory Opinion/Determination	Yes (Determination) No (Advisory Opinion)	Section 2 and 3
2019-04	Advisory Opinion	No	Section 2
2019-03	Advisory Opinion	No	Section 2
2019-02	Advisory Opinion	No	Section 2
2019-01	(Withdrawn) ³	N/A	N/A

¹ For reference, only one advisory opinion and no determinations were issued in the three years preceding January 1, 2018 (Advisory Opinion 2016-01).

² The individual withdrew their request before the Ethics Board took action.

³ The individual withdrew their complaint before the Ethics Board took action.

2018			
	Type	Specific Council Review Procedure?	Applicable Sections of this Memo
2018-08	Advisory Opinion	No	Section 2
2018-07	Advisory Opinion	No	Section 2
2018-06	Advisory Opinion	No	Section 2
2018-05	Advisory Opinion	No	Section 2
2018-04	Determination on Remand	Yes	Section 3
2018-03	Advisory Opinion	No	Section 2
2018-02	Advisory Opinion	No	Section 2
2018-01	Determination	No	Section 4

2. Procedure for Review of Advisory Opinions

The Ethics Program does not specify a procedure for Council review of advisory opinions issued by the Ethics Board, and the Council has not otherwise specified a procedure to be followed.

Therefore, the Council, by majority vote, has the discretion to specify what actions, if any, the Council will take with respect to each of the advisory opinions issued by the Ethics Board.

Possible Council actions include, but are not limited to, one or more of the following:

- Discussion only;
- Affirm the advisory opinion;
- Revoke or otherwise rescind the advisory opinion;
- Amend the advisory opinion;
- Remand to the Ethics Board for further clarification;
- Impose one or more of the possible sanctions outlined in Section 3.D of this memo (i.e., admonition, reprimand, censure, or other sanctions); or
- Schedule time for additional Council consideration.

3. Procedure for Review of Article II Determinations Finding that a Material Violation of the Code of Ethics has Likely Occurred

Article IV of the Ethics Program specifies the following procedure for the Council to follow when reviewing a determination by the Ethics Board that a material violation of the Code of Ethics has likely occurred.

A. Council Review

The Ethics Program directs the Council to review the following materials to determine whether there appears to be a sufficient factual basis to prove one or more violations of Article II (Code of Ethics) by clear and convincing evidence:

- The ethics complaint, filed by the Complainant;
- The response to the ethics complaint, filed by the Respondent; and
- Any other relevant supporting materials.

As part of the Council's review, the Ethics Program mandates that the Respondent be given an opportunity to respond to the complaint. The Ethics Program does not address whether the Complainant may similarly address the Council. However, the Council could vote to allow the Complainant to speak or otherwise respond in some manner.

If the Council needs additional time to complete its review of an ethics complaint, the Council can vote to continue its review to a subsequent Council meeting.

If the Council desires clarification of the Ethics Board's rationale in making its determination, the Council can vote to remand the matter to the Ethics Board to develop additional written findings and conclusions supporting the Ethics Board's determination.

B. Council Decision

After reviewing the matter, the Ethics Program directs the Council to either:

- (1) dismiss the complaint; or
- (2) make a finding that there appears to be a sufficient factual basis to prove a material violation of the Article II (Code of Ethics) by clear and convincing evidence.

The Respondent shall not participate in such votes.

Proof by "clear and convincing evidence" means that the violation must be established by evidence that carries a greater weight and is more convincing than a preponderance of evidence. A "preponderance of the evidence" means, considering all of the evidence, that a violation is more probably true than not true. In contrast, "clear and convincing evidence" exists when occurrence of the violation has been shown by the evidence to be **highly probable**. However, clear and convincing evidence does not mean that the violation must be established by evidence that is convincing beyond a reasonable doubt.

C. Respondent's Options if a Violation is Found

If the Council, by majority vote in an open public meeting, makes a finding that there appears to be a sufficient factual basis to prove a material violation of Article II (Code of Ethics) by clear and convincing evidence, then the Respondent may take one of the following four actions:

1. Admit to the alleged violations of the Code of Ethics;
2. Not admit to the alleged violations, but expressly forego and waive any right to a hearing to contest the violations and any resulting sanction(s) imposed by the Council;
3. Request a hearing before the City's Hearing Examiner to present evidence to dispute, rebut, mitigate, explain, or otherwise defend against any or all of the Code of Ethics violations alleged in the complaint; or
4. Remain silent.

If the Respondent does not request a hearing before the Hearing Examiner, then the Council is directed to schedule and, to the extent allowed under the Open Public Meetings Act, hold an executive session to hear from the Respondent and deliberate upon the appropriate level of civil sanctions to be imposed, which are summarized below. However, the Respondent may request that such deliberations take place in an open public meeting. After such deliberations, the Council would, in an open public meeting by majority vote, adopt written findings, conclusions, and sanctions. The Respondent shall not participate in such votes.

If the Respondent requests a hearing before the Hearing Examiner, then the Respondent may be represented by legal counsel and the Ethics Program directs the City Attorney to designate special counsel to present the Code of Ethics violations charges and case. A hearing would be held and the Hearing Examiner is directed to issue findings of fact and conclusions of law. If the Hearing Examiner determines that the alleged Code of Ethics violation(s) have not been proven, the Examiner shall dismiss the complaint. If the Hearing Examiner determines that a violation occurred, then the Examiner will forward the complaint to the Council for a determination regarding the appropriate level of sanctions to be imposed.

As part of the Hearing Examiner's transmittal to the City Council related to sustaining a violation, the Examiner shall include findings and conclusions that sustain a Code of Ethics violation. Upon receipt of the Hearing Examiner's findings and conclusions, the City Council shall schedule an executive session to consider the findings and conclusions, hear from the respondent, and deliberate upon the appropriate sanctions to be imposed. If the respondent requests that the matter be held in an open public session rather than executive session, the Council shall consider the matter in open session. Written findings, conclusions, and sanctions shall be approved by a majority vote of the Council in an open public session, and the respondent shall not participate in that vote.

D. Possible Sanctions

In the event that either the Hearing Examiner or the Council concludes that a violation of Article II (Code of Ethics) has occurred, the Ethics Program states that the Council may impose any of the following sanctions:

1. Admonition: An admonition is a verbal non-public statement made by the Mayor to the official who has violated the Code.
2. Reprimand: A reprimand shall be a letter prepared by the Council, signed by the Mayor, and directed to the official who has violated the Code.
3. Censure: A censure shall be a written statement administered personally by the Mayor to the official who has violated the Code of Ethics. The individual shall appear at a time and place directed by the Council to receive the censure. The censure shall be given publicly and the official who has violated Article II (Code of Ethics) shall not make any statement in support or opposition thereto or in mitigation. A censure shall be deemed administered at the time it is scheduled whether or not the member appears as required.
4. Other sanctions: Any sanction imposed under the Ethics Program is in addition to and not in lieu of any other penalty, sanction, or remedy which may be imposed or sought according to law or equity.

In reference to the “Other sanctions” option above, the Council has authority under state law to censure one of its members by motion adopted by a majority vote of the Council. If the Council opts to take such an action in a situation involving, for example, an Article II violation by a Councilmember, the Council could move to censure that member for that violation, and in so doing the Council would state in that motion that it was also waiving any provision of the Ethics Program that could potentially conflict with the Council’s authority to conduct such a censure in that manner. Such a waiver would be necessitated because one of the four options above includes a censure, and the censure described as part of the Ethics Program includes specific requirements that are part of the Ethics Program but aren’t required by state law.

4. Procedure for Review of Other Article II Determinations

Since January 1, 2018, the Ethics Board also issued Determination 2018-01, in which the Board determined that the complaint at issue lacked reasonable credibility. The Ethics Program does not specify a procedure for Council review of such a determination, and the Council has not otherwise specified a specific procedure to be followed. Therefore, the Council, by majority vote, could specify what actions, if any, the Council may take with respect to Determination 2018-01.

Under the Ethics Program, no action is required with respect to Determination 2018-01.

If the Council desires to take action, possible Council actions include, but are not limited to, one or more of the following:

- Discussion only;
- Affirm the determination;
- Revoke or otherwise rescind the determination;
- Amend the determination;
- Remand to the Ethics Board for further clarification;
- Impose one or more of the possible sanctions outlined in Section 3.D of this memo (e.g., admonition, reprimand, censure); or
- Schedule time for additional Council consideration.