

City of Bainbridge Island
Ethics Board
Advisory Opinion

Case # 2018-05

Date Filed: 1 October 2018

Complainant: Bonnie McBryan

Respondent: Ron Peltier, Council Member

Advisory Opinion issued per COBI Code of Ethics Article III, Section F

The purposes of Article I, the Core Values section of the City of Bainbridge Island Ethics Program, are set out in the preamble:

“The City of Bainbridge Island has adopted the following Core Values and Ethics Principles to promote and maintain the highest standards of personal and professional conduct among all the people who comprise the City’s government. The optimal operation of democratic government requires that all of its decision-makers be fair and accountable to the people they serve.”

In addition to the COBI stated reasons, it is clear from materials related to municipal government, such as the America Society of Public Administrators (ASPA) Code of Ethicsⁱ, that there are further purposes, among them:

1. To advance the public interest
2. To promote democratic participation
3. To strengthen social equity
4. To demonstrate personal integrity

The efficacy of government and its ability to deliver on the needs of the community is founded in the trust that a community has in that body. Trust is hard to earn and very easy to lose. It can be difficult to define tightly what behavior reflects the Core Values, and we do not propose a static definition of this behavior, yet instead we look towards what promotes trust and what erodes it. In an article by Williamsⁱⁱ, the matter of civility in political discourse is examined.

“[H]ow do we define civility? Especially if we accept the notion that it cannot be static – as technology and innovation are constantly redefining the means and manner in which we communicate. In this sense civility is a lot like obscenity, at least in the way the late Supreme Court Justice Potter Stewart chose to define it in his famous opinion in *Jacobellis v. Ohio* (1964), ‘I know it when I see it.’”

We can look towards rules of etiquette established by governing bodies to provide greater definition. The U.S. House of Representatives Republicans’ rules of decorum include several categories of unacceptable speechⁱⁱⁱ:

- Defaming or degrading the [House] – in our case, the City
- Criticism of personal conduct
- Impugning the motives of another member
- Charging falsehood or deception
- Claiming lack of intelligence or knowledge

While not as precisely articulated, the City of Bainbridge Island Ethics Board believes our Code of Ethics Core Values were promulgated to engender trust by the public in our city government. The First Amendment protects speech, including that of elected officials, however “it does not remove the individuals’ responsibility to be respectful in their use of language. With a far greater means of amplifying their message, elected officials have an even greater responsibility to be judicious in their communication respecting the rules of . . . civil discourse for the benefit” of the council and the community.^{iv} In other words, elected officials are held to a higher standard when acting in their official capacity than their constituents who do not purport to represent the community. This is with the intent to engender trust in government and the representatives who are elected.

The Ethics Board recognizes that people are human, and mistakes and misjudgments will be made. Where the Ethics Board has a responsibility, it is to recognize the problematic actions, particularly when they seem to become a pattern of behavior that causes citizen concern and thus weaken the public trust. The role of the Ethics Board is to educate when we observe inappropriate behavior, or it is called to our attention, and to recommend behavior that comports with our shared values and principles, while understanding there is not

a static definition of acceptable behavior. In issuing this advisory opinion, we are guided by other democratic bodies which deal with similar issues of behavior.

In developing an Advisory Opinion in this Article I complaint, the initial complaint and response were reviewed. This Advisory Opinion stems from that considered review.

In the McBryan Article I complaint filed with the Ethics Board, the following behavior has been cited.

- A) During public comment on August 14, 2018 before Council, responding vehemently to citizen comments, and further returning to the exchange at the end of the same meeting to expound upon his comments. Calling a citizen's comments "lies" does not promote open public discourse.**

Recommendation regarding conduct of City Council member: While there are times when an official may feel verbally attacked by a member of the public, responding in anger is not appropriate in any circumstance, particularly using highly derogatory terms. In such a situation, the responsible and ethical behavior is to refrain from engaging in the conversation as that only escalates it. The role of serving the public calls for a more mature response, which in this case is no response at all, or to offer a constructive response and establish a culture of open discourse. Otherwise such action degrades trust in government and unchecked, can lead to rapid erosion of all trust built over time, especially in highly public forums. The action complained of also conveys a perception that the city council is not open to feedback and criticism, thereby stemming the ability for citizenry to participate in the democratic process.

Recommendation regarding conduct of Mayor/Chair: It must be pointed out that there is a role for the presiding officer in these public situations – the Mayor or Chair needs to be alert to potentially inflammatory comments by the public and remind the commenter of the need to be respectful. We realize comments may arise without warning, but when they are recognized, the Mayor or another Council member should call a halt to proceedings and publicly acknowledge the error in conduct. More importantly, allowing a Council member to engage in an extended angry discourse is not acceptable.

B) Publishing an email to numerous selected community residents, again accusing the citizen of lying and encouraging wide distribution of the email by recipients.

Recommendation: This action appears retaliatory and harassing in response to the initial citizen comments made in public. Using a city email account to broadcast a council member's dislike of public comments clearly fails any test of respectful communication. This is unacceptable.

C) A public records request provided emails which were included with the complaint. In reviewing these, a further concern is raised with regard to language used by the Council member. In writing of a development on the island, the Council member referred to a developer of property as "California developers who spotted BI as a place to loot and pillage." [August 1, 2018 email to Olaf Ribeiro and assorted citizens]

Recommendation: Attitudes toward development on the island may engender strong responses. It is not appropriate for a city official to refer to people exercising their right to develop their land according to the city's zoning code as people "looting and pillaging." Nor would this be appropriate language to use for any part of the population exercising their rights as citizens. It also impugns the motives of citizens and makes claims of falsehood and deception. This is inflammatory language and is unacceptable, and further erodes trust of government in the eyes of citizens.

ⁱ Practices to Promote the ASPA Code of Ethics, approved 3/16/13.

ⁱⁱ Williams, Yohuru, "A Matter of Integrity: Civility and Political Discourse." Insights on Law and Society, 13 Winter 2013

ⁱⁱⁱ Williams, *ibid*, p. 4

^{iv} Williams, *ibid.*, p. 5