

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of Ethics Complaints	)	No. HEA 2021-Ethics
	)	Complaints 2020-02 and 2020-05
	)	
<b>By Ron Peltier</b>	)	
	)	
	)	
Against Former City Councilmember	)	FINDINGS, CONCLUSIONS,
<u>Kol Medina</u>	)	AND DECISION

**SUMMARY OF PROCEEDINGS**

Hearing Date:

The Hearing Examiner held a hearing on the complaints on March 24, 2021, using remote hearing technology.

Testimony:

No testimony was presented at the hearing.

Attorney Andrew James Sletten appeared as Special Counsel at the hearing to present the case as required by Article IV of the Ethics Code. Specifically, Article IV, Section A.2, provides that the City Attorney “shall designate special counsel to present the Code of Ethics violations charges and case” and allows for the “respondent and special counsel [to] present and cross examine witnesses and give evidence before the Hearing Examiner.”

Exhibits:

The following exhibits were admitted into the record:

*Special Counsel Exhibits:*

- A-1. Email from Kol Medina to Linda Allen, dated April 18, 2018, with email string
- A-2. City of Bainbridge Island City Council, Special Meeting Minutes, dated April 3, 2018
- A-3. “Eminent domain enters the discussion on land for new Bainbridge police station,”  
*Bainbridge Island Review*, dated April 14, 2018

Orders, Motions, and Briefs:<sup>1</sup>

- Hearing Examiner’s Review of Ethics Complaint (No. HEA 2020-Ethics), dated February 14, 2020

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<sup>1</sup> The Orders, Motions, and Briefs include documents previously submitted and considered by the Hearing Examiner when he issued a March 16, 2021, decision denying the Respondent’s motion to dismiss the complaints. *Hearing Examiner’s Decision on Dispositive Motion, dated March 16, 2021.*

*Findings, Conclusions, and Decision  
City of Bainbridge Island Hearing Examiner  
Peltier Ethics Complaints  
No. HEA 2021-Ethics – Complaints 2020-02 and 2020-05*

- City of Bainbridge Island Resolution No. 2019-26
- City of Bainbridge Island Resolution No. 2020-13
- Ethics Complaint 2020-02, dated September 11, 2020
- Response to Ethics Complaint 2020-02, dated October 26, 2020
- Ethics Board Determination (Ethics Complaint 2020-02), dated January 25, 2021
- Ethics Complaint 2020-05, dated November 11, 2020
- Response to Ethics Complaint 2020-05, dated November 9, 2020
- Hearing Examiner's Prehearing Order, revised February 24, 2021
- Respondent Motion to Dismiss, dated March 5, 2021
- Response of Special Counsel to Respondent's Motion to Dismiss, dated March 12, 2021
- Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021
- Special Counsel Document List, dated March 17, 2021
- Special Counsel Witness List, dated March 17, 2021
- Respondent Brief, dated March 17, 2021
- Special Counsel Brief, dated March 17, 2021

The Hearing Examiner enters the following findings and conclusions based on the exhibits admitted at the hearing, the arguments presented at the hearing, and the documents previously considered by the Hearing Examiner in his prior decision denying the Respondent's motion to dismiss.

## **FINDINGS**

### Regulatory Background

1. The City of Bainbridge Island City Council adopted Resolution 2020-13 on August 11, 2020, with the same effective date.<sup>2</sup> The resolution updates the process by which complaints must be filed and considered by the Ethics Board. It notes that the City of Bainbridge Island (City) has adopted a Code of Conduct, consisting of Core Values and Ethical Principles, to promote and maintain the highest standards of personal and professional conduct among City Council members and members of City committees and commissions. *Resolution 2020-13.*
  
2. Article I of the resolution establishes a Code of Conduct with four Core Values and three Ethics Principles to guide conduct by City Council members and members of City committees and commissions. Article II establishes additional Code of Ethics rules, which are involved in the complaints here. Article III of the resolution provides the procedures for filing and reviewing a complaint. The complaint is to be filed with the City Clerk, alleging violations of either Article I or Article II. As detailed below, Ron Peltier alleges violations of Article II by former Mayor and Councilmember Kol Medina (Respondent) in Complaints 2020-02 and 2020-05. The resolution further provides that,

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<sup>2</sup> Resolution 2020-13 repealed and replaced in its entirety Resolution 2019-26, which had been adopted on November 26, 2019.

if a complaint alleges one or more violations of Article II by a councilmember, the complaint shall be referred to the City’s Ethics Board, and the respondent is allowed to provide a response. After a review of the complaint and response, the Ethics Board is provided with several options, including determining that the Board’s determination and associated materials should be forwarded to the Hearing Examiner for review and possible further proceedings in accordance with Article IV. *Article III, Section B.7.a - f.* Specifically, Article III, Section B.7.f, provides:

If the Ethics Board, after review of the complaint and any response, determines that the facts asserted in the complaint appear credible and appear to constitute a violation of the Code of Ethics (Article II), then the Ethics Board shall, following legal review, issue such a determination, and forward its determination, along with the complaint and response, to the complainant, respondent, and the City Clerk. The City Clerk shall then forward the Board’s determination and associated materials to the Hearing Examiner for review and possible further proceedings in accordance with Article IV.

*Resolution 2020-13; Ethics Complaint 2020-02; Ethics Complaint 2020-05.*

#### Background

##### *Complaint 2020-02*

3. Ron Peltier filed an ethics complaint (Complaint 2020-02) with the City Clerk on September 11, 2020, alleging violations of the Code of Ethics (Article II) by Councilmember and former Mayor Kol Medina (Respondent). Complaint 2020-02 alleges that the Respondent violated Article II, Section C, Confidentiality, which provides:

Except as required by law, a Councilmember, former Councilmember, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential, or propriety information obtained in executive session or otherwise in the course of their duties as a result of their position.<sup>[3]</sup>

*Ethics Complaint 2020-02; Hearing Examiner’s Decision on Dispositive Motion, dated March 16, 2021.*

4. Complaint 2020-02 asserts that the Respondent violated Article II, Section C, by disclosing information discussed during an April 3, 2018, executive session attended by councilmembers and the Respondent, who was serving as the City mayor at the time. Specifically, the complaint asserts:

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<sup>3</sup> Article VI of the City Code of Conduct and Ethics Program defines *Confidential Information* as “(a) specific information, rather than generalized knowledge, that is not available to the general public on request; or (b) information made confidential by law.”

- (1) During the City Council's April 10, 2018 meeting then Mayor Medina announced that the Council had discussed the possible use of eminent domain to acquire a site for a police and court facility, and;
- (2) On April 18, 2018 [Councilmember]/Mayor Medina disclosed in an email communication to a member of the public that a specific council member had introduced and supported the possible use of eminent domain to acquire property for a new police and court facility.

The details of both disclosures by then Mayor Medina came directly from the April 3, 2018 executive session with no other public disclosure or discussion. The disclosed details were known only by [Councilmember] Medina by virtue of his attendance at the April 3, 2018 executive session.

*Ethics Complaint 2020-02; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021; Exhibits A-1 through A-3.*

*Reponse to Complaint 2020-02*

5. The Repondent submitted a written response to Complaint 2020-02, which asserted that he would no longer be serving as a councilmember by the time that the complaint would be reviewed and, therefore, the complaint should be dismissed as moot because there is no relief that can be provided under the City's ethics code for an alleged violation against an individual who is no longer serving as a councilmember. In support of his assertion, the Repondent attached to his response an ethics complaint decision, issued by the Hearing Examiner, which dismissed a complaint filed against members of the City Ethics Board who had all resigned from their position prior to the filing of the complaint. The reponse to Complaint 2020-02 also asserted that the Respondent did not violate the confidentiality provisions of Article II, Section C, because he obtained information about the City Council's potential use of eminent domain through conversations with councilmembers, including then-Councilmember Peltier, that took place outside of executive session. *Response to Ethics Complaint 2020-02; Hearing Examiner's Review of Ethics Complaint (No. HEA 2020-Ethics), dated February 14, 2020; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021.*

*Ethics Board Determination on Complaint 2020-02*

6. The Ethics Board reviewed Complaint 2020-02 and the Respondent's response and, on January 25, 2021, issued a determination that the facts asserted in the complaint appear reasonably credible and appear to constitute a violation of Article II. The Ethics Board's Determination on Complaint 2020-02 notes that it lacks authority to grant the Respondent's request to dismiss the complaint based on his status as a former councilmember and, further, that dismissal of the complaint or holding the complaint for

*Findings, Conclusions, and Decision  
City of Bainbridge Island Hearing Examiner  
Peltier Ethics Complaints  
No. HEA 2021-Ethics – Complaints 2020-02 and 2020-05*

action at a future time would not be warranted under any of the enumerated provisions of Article III, Section B.7.a - e.<sup>4</sup> Accordingly, the Ethics Board forwarded the complaint for review by the Hearing Examiner pursuant to Article III, Section B.7.f. *Resolution 2020-13; Ethics Board Determination (Ethics Complaint 2020-02)*.

#### *Complaint 2020-05*

7. Mr. Peltier filed a second ethics complaint (Complaint 2020-05) with the City Clerk on November 11, 2020, alleging violations of the Code of Ethics (Article II) by Councilmember Kol Medina. Complaint 2020-05 alleges violations of Article II, Section D.1.b, Conflict of Interest, which provides in relevant part, “[A] Councilmember . . . shall not take any direct official action<sup>5</sup> on a matter if they . . . [h]ave a significant financial or private interest in that matter.” *Ethics Complaint 2020-05; Hearing Examiner’s Decision on Dispositive Motion, dated March 16, 2021*.
8. Complaint 2020-05 asserts that the Respondent violated Article II, Section D.1.b, by taking direct official actions during an October 27, 2020, City Council meeting regarding Ethics Board Operating Rules that related to a different ethics complaint (Complaint 2020-03) filed against the Respondent. Specifically, Complaint 2020-05 asserts that the Respondent moved to amend the Ethics Board Operating Rules to require dismissal of anonymous complaints, which the complaint appears to contend would have affected the other, pending complaint against then-Councilmember Medina because it had been filed by an attorney on behalf of an anonymous client. *Ethics Complaint 2020-05; Hearing Examiner’s Decision on Dispositive Motion, dated March 16, 2021*.

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<sup>4</sup> Article III, Section B.7.a - d provides that the Ethics Board shall dismiss a complaint if, after review of the complaint and any response, it determines that: (a) the complaint alleges violations of Article I rather than Article II; (b) the complaint lacks reasonable credibility; (c) the facts stated in the complaint, even if true, would not constitute a violation of Article II; or (d) any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of Article II. Article III, Section B.7.e provides that the Ethics Board shall hold the complaint for action at a future time if the matter is the subject of litigation.

<sup>5</sup> Article VI of the City Code of Conduct and Ethics Program defines *direct official action* in relevant part as “taking action, as defined by RCW 42.30.020, in an open public meeting,” and explicitly excludes from the definition “acts that do not affect the disposition of decision with respect to the matter.” RCW 42.30.020(3) provides:

“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

*Response to Complaint 2020-05*

9. The Repondent submitted a written response to Complaint 2020-05, which argued, similar to his response to Complaint 2020-02, that the complaint should be dismissed as moot because it was submitted on the same day that his resignation from the City Council became effective. The reponse to Complaint 2020-05 also asserted that the Respondent did not violate the conflict of interest provisions of Article II, Section D.1.b, because any amendment to the Ethics Board Operating Rules would not operate retroactively and, therefore, would not affect any pending ethics complaint filed against him and, alternatively, because he later proposed that the Council table his motions to amend the Ethics Board Operating Rules on Novermber 10, 2020, prior to the November 16, 2020, Ethics Board meeting at which it would consider the ethics complaint against him in Complaint 2020-03. *Response to Ethics Complaint 2020-05; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021.*

*Ethics Board Determination on Complaint 2020-05*

10. The Ethics Board reviewed Complaint 2020-05 and the Respondent's response and, on January 25, 2021, issued a determination that the facts asserted in the complaint appear reasonably credible and appear to constitute a violation of Article II. As with the Ethics Board's Determation on Complaint 2020-02, the Determination on Complaint 2020-05 notes that the Ethics Board lacks authority to grant the Respondent's request to dismiss the complaint based on his status as a former councilmember and, further, that dismissal of the complaint or holding the complaint for action at a future time would not be warranted under Article III, Section B.7.a - e. Accordingly, the Ethics Board fowarded the complaint for review by the Hearing Examiner. *Resolution 2020-13; Ethics Board Determination (Ethics Complaint 2020-05).*

The Role of the Hearing Examiner

11. Under Article IV of the resolution, "Hearings conducted by the Hearing Examiner shall be informal and held in accordance with the rules of procedure adopted by the Hearing Examiner, except to the extent that such rules conflict with the terms of this Ethics Program." The Rules of Procedure for Proceedings before the Hearing Examiner of the City of Bainbridge Island (Rules) allow for the submission of briefs and motions, including motions requesting dismissal of an action, and provide the Hearing Examiner with discretion to dismiss an action without a hearing "if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely for the purpose of delay." *Rule 2.3.1.* In addition, the rules provide the Hearing Examiner with authority to issue Prehearing Orders to set a hearing date, establish a briefing and motion schedule, and address any other matters appropriate for the orderly and expeditious disposition of the proceedings. *Rule 2.4.1. Resolution 2020-13; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021.*

12. If it is determined, following the Hearing Examiner's review under Article IV, that the alleged Code of Ethics violations(s) have not been proven, the Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more violations are proven, the Hearing Examiner shall forward the matter to the City Council for a determination regarding the appropriate level of sanctions to be imposed (Article II). *Resolution 2020-13; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021.*

#### Pre-Hearing Matters

13. The Hearing Examiner issued a Pre-Hearing Order, revised February 24, 2021, setting a hearing on the complaints for March 24, 2021, and allowing the parties to submit any motions by March 5, 2021, with any responses to the submitted motions due by March 12, 2021. *Hearing Examiner's Pre-Hearing Order, revised February 24, 2021.*
14. The Respondent timely filed a motion to dismiss both complaints, which asserted that the complaints were moot because he no longer serves as a councilmember and, therefore, there was no effective relief that could be provided for the alleged violations under the code of ethics. Special Counsel Andrew James Sletten (Special Counsel) submitted a timely response in opposition to the Respondent's motion to dismiss. *Respondent Motion to Dismiss, dated March 5, 2021; Response of Special Counsel to Respondent's Motion to Dismiss, dated March 12, 2021.*
15. After reviewing the Respondent's motion, Special Counsel's response, and all documents submitted by the parties in relation to the motion, the Hearing Examiner denied the Respondent's motion to dismiss the complaints on March 16, 2021. In denying the Respondent's motion to dismiss the complaints as moot, the Hearing Examiner noted that Complaint 2020-02 alleges a violation of the confidentiality provisions of Article II, Section C, which explicitly apply to "former Councilmember[s]" and therefore impose a continuing obligation on councilmembers to abide by its terms after leaving office. The Hearing Examiner also noted that the City Council could impose sanctions against a councilmember for an ethics violation that include issuing a verbal, non-public admonition; a reprimand in the form of a letter; censure in the form of a written statement; or other non-specified sanctions. The Hearing Examiner reasoned that these sanctions could provide effective relief from a violation of the resolution's confidentiality rules by a councilmember who has since left office by reminding the former councilmember of his or her continuing confidentiality obligations and, therefore, determined that Complaint 2020-02 should not be summarily dismissed as moot. The Hearing Examiner also denied the Respondent's motion to dismiss Complaint 2020-05 without squarely addressing whether the complaint was moot, reasoning that the matter should proceed to a hearing in the interests of judicial efficiency but that the Hearing Examiner would consider any additional argument from the Respondent on the mootness

issue at the hearing. *Resolution 2020-13; Hearing Examiner's Decision on Dispositive Motion, dated March 16, 2021.*

Briefs

16. Special Counsel filed a prehearing brief on March 17, 2021, in which Special Counsel asserts that direct and circumstantial evidence would appear to support a determination by clear and convincing evidence that the Respondent violated his duty of confidentiality under Article II, Section C, as alleged in Complaint 2020-02. Specifically, Special Counsel contends that the following facts would support a determination that the Respondent violated Article II, Section C:
- The City Council meeting minutes from April 3, 2018, which were signed by the Respondent, support the fact that the Respondent attended an executive session on that date.
  - The documented purpose of the executive session was “to consider the selection of a site or acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.” *Exhibit A-2.*
  - At a City Council meeting on April 10, 2018, the Respondent stated that City Councilmembers had discussed the possibility of acquiring property through eminent domain for a police facility but that, based on those discussions, it did not appear that a majority of councilmembers would support such a proposal.
  - The Respondent acknowledges authoring an email to a constituent, dated April 18, 2018, in which he disclosed that Mr. Peltier was the councilmember who had raised and supported the possibility of using eminent domain to acquire property for a police facility.
  - The Respondent argues that prior public discussions with other councilmembers, including Mr. Peltier, about the possibility of using eminent domain to acquire property for a police facility absolved him of the duty of confidentiality under the Code of Ethics rules.
  - Under penalty of perjury, Mr. Peltier alleges in Complaint 2020-02 that the City Council discussed using eminent domain to acquire property at the April 3, 2018, executive session.
  - In his response to Complaint 2020-02, the Respondent states that he cannot confirm whether the subject of eminent domain was discussed at the executive session because such confirmation would, itself, constitute a violation of the confidentiality rules. This statement appears to be an admission by the Respondent that he had, and continues to have, a duty of confidentiality not to disclose that the topic of eminent domain was discussed at the executive session.
  - The Respondent's assertion that his comments on eminent domain related to private conversations with Mr. Peltier and another councilmember is contradicted by his statements at the April 10, 2018, City Council meeting that it did not



appear to him that a majority of councilmembers would support a proposal to use eminent domain.

*Special Counsel Brief, dated March 17, 2021.*

17. In support of Special Counsel’s assertion that clear and convincing evidence demonstrated that the Respondent violated Article II, Section C, Special Counsel submitted: a copy of the Respondent’s April 18, 2018, email to a constituent in which the Respondent stated that Mr. Peltier had raised the possibility of using eminent domain to acquire property for a police facility; a copy of the April 3, 2018, Special City Council Meeting Minutes, which documented that councilmembers discussed the acquisition of real estate during an executive session; and a copy of a news article published in the *Bainbridge Island Review*, which noted that the Respondent had stated at an April 10, 2018, City Council meeting that councilmembers recently explored the possibility of using eminent domain to acquire property for a new police facility. *Exhibits A-1 through A-3.*
18. Regarding Complaint 2020-05, Special Counsel asserts that it is unlikely that clear and convincing evidence would support a determination that the Respondent violated Article II, Section D.1.b, based on the following:
  - The pertinent issue with regard to Complaint 2020-05 is whether the Respondent had a significant financial or private interest in the matter of amending the Code of Ethics Program to require the City Clerk to not accept any future complaints where a complainant’s name and address is not provided.
  - The Code of Ethics Program requires that the name and address of a complainant be provided. The amendment at issue merely clarified an administrative requirement for accepting a complaint but did not change the actual requirements a person must satisfy to file a complaint.
  - Additionally, the language of the amendment did not direct that previous complaints with that defect would be null and void, and there was no indication of retrospective application of the proposed amendment.
  - There is no clear significant financial or private interest of the Respondent implicated in the proposed changes to the Code of Ethics Program identified in Complaint 2020-05.

*Special Counsel Brief, dated March 17, 2021.*

19. The Respondent filed a prehearing brief on March 17, 2021, in which he states that he would not participate at the hearing and would instead rely solely on his previous responses to the complaints, which were given under penalty of perjury, and on his motion to dismiss the complaints as moot. *Respondent Brief, dated March 17, 2021.*

### Hearing

20. As noted above, the Respondent did not participate at the hearing, and no witnesses were called to testify.
21. Special Counsel argued at the hearing that clear and convincing evidence would support a determination that the Respondent violated Article II, Section C, as alleged in Complaint 2020-02, for the reasons set forth in Special Counsel's prehearing brief. Special Counsel stressed that the Respondent's assertion that he could not confirm whether the topic of eminent domain was discussed during executive session due to the confidentiality rules suggests that the topic was, in fact, discussed during the session and, therefore, his later disclosures constituted violations of the Code of Ethics. Regarding Complaint 2020-05, Special Counsel argued at the hearing that clear and convincing evidence would not support a determination that the Respondent violated Article II, Section D.1.b, because the Respondent's proposed amendment to the Code of Ethics would apply only prospectively and would merely clarify existing rules under the program and, therefore, the proposed amendment would not provide any material benefit to the Respondent. Special Counsel also reasserted the position that Complaint 2020-02 cannot be moot because the Code of Ethics' dictates that a councilmember's obligation to maintain confidentiality continues after the councilmember leaves office. *Argument of Special Counsel.*

## **CONCLUSIONS**

### Jurisdiction

The Hearing Examiner has jurisdiction to hear and determine whether alleged violations of the Code of Ethics (Article II) have been proven by clear and convincing evidence. *City of Bainbridge Island Code of Conduct and Ethics Program (Program), Resolution No. 2020-13, Article IV, Section A.*

### Criteria for Review

Article IV, Section A.4, of the Program provides:

[T]he Hearing Examiner shall, based upon a standard of proof of clear and convincing evidence, make 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 Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more Code of Ethics violation(s) are proven, the Hearing Examiner shall forward the matter to the City Council for a determination regarding the appropriate level of sanctions to be imposed for the Code of Ethics (Article II) violations.

The Program does not define clear and convincing evidence. The Washington Supreme Court has noted that the clear and convincing evidence standard "is a quantum of proof that is more than a preponderance of the evidence, but less than what is needed to establish proof beyond a

reasonable doubt.” *In re Estate of Barnes*, 185 Wn.2d 1, 10 n.5, 367 P.3d 580 (2016). Further guidance on the clear and convincing evidence standard is provided by Washington Pattern Jury Instruction-Civil 360.06, which states in part:

Clear, cogent, and convincing evidence exists when the element has been shown by the evidence to be highly probable. Proof by clear, cogent, and convincing requires a greater showing than is required under the “preponderance of the evidence” standard that is used in many other civil cases. Preponderance of the evidence exists when an element has been shown to be more probably true than not true. On the other hand, proof by clear, cogent, and convincing evidence does not require as great a showing as is required under the “reasonable doubt” standard used in criminal cases. Reasonable doubt means such a doubt as exists in the mind of a reasonable person after fully, fairly, and carefully considering all the evidence or lack of evidence.

### Conclusions Based on Findings

- 1. Clear and convincing evidence supports a determination that the Respondent violated Article II, Section C, of the Code of Ethics, as alleged in Complaint 2020-02.** Article II, Section C provides in relevant part that it is a violation of the Code of Ethics for any Councilmember or former Councilmember to “disclose . . . confidential . . . information obtained in executive session.” The Respondent and City Councilmembers attended an executive session on April 3, 2018, the documented purpose of which was “to consider the selection of a site or acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.” *Exhibit A-2*. The Respondent has neither denied nor confirmed that the specific topic of potentially using eminent domain to acquire property for a new police facility was discussed at the executive session, and the Hearing Examiner finds credible Mr. Peltier’s assertions in Complaint 2020-02 that the specific topic of eminent domain was discussed during the April 3, 2018, executive session. Accordingly, clear and convincing evidence establishes that the Respondent obtained confidential information during an executive session for which he had, and continues to have, a duty not to disclose under Article II, Section C. After obtaining this confidential information at the executive session, Respondent attended a City Council meeting on April 10, 2018, at which he stated that councilmembers had discussed the possibility of acquiring property through eminent domain for a new police facility but that it did not appear to him that a majority of councilmember would support such a proposal. The Respondent again discussed councilmembers’ consideration of using eminent domain to acquire property for a police facility in an April 18, 2018, email to a constituent, in which the Respondent specifically stated that Mr. Peltier was the Councilmember who had raised the possibility of using eminent domain. The Respondent does not dispute that he disclosed the potential use of eminent domain at the April 10, 2018, City Council meeting or in his April 18, 2018, email, but instead contends that his discussion of eminent domain was based on private conversations with Mr. Peltier and other councilmembers outside of executive session.

The Respondent, however, has not supported this contention with any testimony or sworn affidavits from other councilmembers. More importantly, even accepting the Respondent's contention as true, it would not relieve him of the obligation to not disclose "confidential information" discussed at the executive session, which is defined in part by the Code of Ethics to include "specific information, rather than generalized knowledge, that is not available to the general public on request." *Article VI - Definitions*. Private conversations with councilmembers outside of executive session on a topic later discussed during a confidential executive session do not render the topic as generalized public knowledge not subject to the confidentiality rules under the Code of Ethics. The Respondent's claim that Complaint 2020-02 is moot has been addressed in the Hearing Examiner's previous decision denying the Respondent's motion to dismiss, and the Respondent has not presented a compelling argument for the Hearing Examiner to revisit that decision. Accordingly, clear and convincing evidence supports a determination that the Respondent violated Article II, Section C, of the Code of Ethics. *Findings 1 – 6, 11 – 21*.

2. **Clear and convincing evidence does not support a determination that the Respondent violated Article II, Section D.1.b, of the Code of Ethics, as alleged in Complaint 2020-05.** Article II, Section D.1.b, provides in relevant part that it is a violation for any councilmember to take any direct official action on a matter if he or she has a "significant financial or private interest in that matter." Complaint 2020-05 alleges that the Respondent violated this provision by proposing an amendment to the Ethics Board Operating Rules that would require the City Clerk to reject ethics complaints that fail to provide the complainant's name and address because, at the time of proposing the amendment, the Respondent had a complaint filed against him by an attorney on behalf of an anonymous client. The proposed amendment, however, would not apply retroactively to pending complaints and, therefore, would not have any effect on the complaint filed against the Respondent. Therefore, the Respondent did not have a significant private interest in the amendment and, therefore, did not have any conflict of interest preventing him from proposing it. Moreover, even assuming that the Respondent had some tangential interest in the proposed amendment as a result of the pending complaint against him, such interest would not be "significant" under the Code of Ethics. Article III, Section A.2, provides a substantive requirement that complaints "must include the name and address of the complainant," and the amendment proposed by the Respondent would merely give effect to Article III, Section A.2, by requiring the City Clerk to reject complaints not meeting this requirement. Accordingly, clear and convincing evidence does not support a determination that the Respondent violated Article II, Section D.1.b, as alleged in Complaint 2020-05. Because the Hearing Examiner has determined that clear and convincing evidence does not support Complaint 2020-05, the Hearing Examiner declines to address whether the complaint is moot, as argued by the Respondent. *Findings 1, 2, 7 – 21*.

## DECISION

Clear and convincing evidence **SUPPORTS** a determination that the Respondent violated Article II, Section C, of the Code of Ethics, as alleged in Complaint 2020-02. Clear and convincing evidence **DOES NOT SUPPORT** a determination that the Respondent violated Article II, Section D.1.b, of the Code of Ethics, as alleged in Complaint 2020-05. Accordingly, the City Council shall schedule an executive session within 45 business days of receipt of this decision, consistent with Article IV, Section B of the Code of Ethics, to take further action as it deems appropriate.

Decided this 7<sup>th</sup> day of April 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center