



TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, City Manager

DATE: March 23, 2021

RE: **Ordinance No. 21-1910 – Amending And Adding Certain Provisions To Ketchikan Municipal Code Chapter 2.05 Entitled “Code Of Ethics;” And Establishing An Effective Date**

The attached ordinance was prepared by City Attorney Mitch Seaver, who asked that it be placed before the City Council for consideration at its meeting of April 1, 2021. If adopted, Ordinance No. 21-1910 provides for amending Chapter 2.05 of the Ketchikan Municipal Code, entitled Code of Ethics. The City Attorney’s transmittal memorandum details the modifications to Chapter 2.05 and requires no elaboration on the part of my office.

Attorney Seaver will attend the City Council meeting of April 1, 2021, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended the City Council adopt the motion approving in first reading Ordinance No. 21-1910 amending and adding certain provisions to Ketchikan Municipal Code Chapter 2.05 entitled “Code of Ethics;” and establishing an effective date.

Recommended Motion: I move the City Council approve in first reading Ordinance No. 21-1910 amending and adding certain provisions to Ketchikan Municipal Code Chapter 2.05 entitled “Code of Ethics;” and establishing an effective date.

Mitch Seaver
City Attorney

City of Ketchikan, Alaska

334 FRONT STREET
Ketchikan, Alaska 99901
Telephone (907) 228-5611

TO: Karl Amylon
City Manager

FROM:  Mitch Seaver
City Attorney

DATE: March 23, 2021

SUBJECT: Code of Ethics Revision Ordinance No. 21-1910

A proposed ordinance revising the Code of Ethics and a copy of the existing Code of Ethics are transmitted herewith. The following is a brief section by section description of the proposed ordinance:

- Section 1. Adds municipal officers in the policy statement. KMC 2.05.010.
- Section 2. Adds the term officer to correct an error in the existing ordinance. KMC 2.05.070.
- Section 3. Adds distinction between as to how public employees, appointed municipal officers and elected municipal officers are to disclose personal or financial interests. KMC 2.05.080.
- Section 4. Adds language as to appointed and elected municipal officers obtaining surplus property.
- Section 5. Adds new section concerning representation of the council's position. KMC 2.05.115.
- Section 6. Adds the term, "municipal officer," to correct an error in the existing ordinance. KMC 2.05.120.
- Section 7. Adds distinction between how employees, appointed municipal officers and elected municipal officers are to report potential violations. KMC 2.05.130.
- Section 8. Adds distinctions as to how violations by public employees, appointed municipal officers and elected municipal officers are to be addressed. KMC 2.05.140.

Section 9. Adds all municipal officers and personal interests to the conflicts of interest prohibition. Also specifies that other council members may make inquiry of the municipal officers.

Section 10. Adds provision regarding complaints of violations.

Section 11. Repeals, amends and adds certain definitions. KMC 2.05.160.

Section 12. Adds new section that the ethics code supercedes the common law.

Please let me know if you have any questions or would like to discuss the proposed ordinance.

cc: Kim Stanker
City Clerk

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 21-1910

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; AMENDING AND ADDING CERTAIN PROVISIONS TO KETCHIKAN MUNICIPAL CODE CHAPTER 2.05 ENTITLED "CODE OF ETHICS;" AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Amendment. Section 2.05.010 of the Ketchikan Municipal Code, entitled "Declaration of policy," is hereby amended to read as follows:

"2.05.010 Declaration of policy.

(a) The city council declares that public service ~~[employment]~~ is a public trust that should be free from the danger of conflict of interest. It is declared that high ethical standards among municipal officers and public employees are essential to the conduct of city government. It is further declared that holding public employment and a municipal office is a public trust and that, as one safeguard of that trust, the people require public employees and municipal officers to adhere to a code of ethics.

(b) The purposes of this chapter are:

- (1) To set reasonable standards for elected municipal officers and city employees;
- (2) To discourage municipal officers and public employees from acting upon a private or business interest in the performance of a public duty;
- (3) To assure that municipal officers and public employees in their official acts are free of the influence of undisclosed personal ~~[private]~~ or financial ~~[business]~~ interests;
- (4) To develop public confidence in persons seeking or holding public employment or municipal office."

Section 2: Amendment. Section 2.05.070 of the Ketchikan Municipal Code, entitled “Improper use or disclosure of information,” is hereby amended to read as follows:

“2.05.070 Improper use or disclosure of information.

(a) A current or former municipal **officer** or public employee may not disclose or use information gained in the course of, or by reason of, the officer’s or employee’s official duties that could in any way result in the receipt of any substantial personal or substantial financial benefit for the officer or employee or his/her immediate family member unless the information has also been disseminated to the public.

(b) A current or former municipal officer or public employee may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential.”

Section 3: Amendment. Section 2.05.080 of the Ketchikan Municipal Code, entitled, “Improper influence in grants, contracts, or leases,” is hereby amended to read as follows:

“2.05.080 Improper influence in grants, contracts, or leases.

(a) Unless otherwise excepted by this chapter, a municipal officer or public employee, or immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a substantial personal or substantial financial interest in a city grant, contract, or lease if the municipal officer or public employee may take or withhold official action that affects the award, execution, or administration of the city grant, contract, or lease;

(b) The prohibition in subsection (a) of this section does not apply to a city grant, contract, or lease competitively solicited unless the **appointed municipal officer or** employee:

(1) Is employed **within** [~~by~~] the department or division awarding the grant, contract, or lease, or is employed **within** [~~by~~] the department or division for which the grant, contract, or lease is let;

(2) Takes official action with respect to the award, execution, or administration of the grant, contract, or lease;

(c) A public employee other than an appointed municipal officer shall report in writing to his/her designated supervisor any personal or financial interest held by the employee, or an immediate family member, in a city grant, contract, or lease that is to be awarded, executed, or administered by the department or division served by the employee.

(d) An appointed municipal officer shall disclose to the mayor and council any personal or financial interest held by the appointed municipal officer in a city grant, contract or lease that is to be awarded, executed or administered by the appointed municipal officer. A disclosure under this section shall be made as set forth in KMC 2.05.150.

(e) An elected municipal officer shall disclose to the mayor and council any personal or financial interest held by the officer in a city grant, contract or lease that is to be awarded, executed or administered by the officer. A disclosure under this section shall be made as set forth in KMC 2.05.150.”

Section 4: Amendment. Section 2.05.110 of the Ketchikan Municipal Code, entitled, “Restriction on obtaining surplus city property,” is hereby amended to read as follows:

“2.05.110 Restriction on obtaining surplus city property.

A municipal officer or a public employee is prohibited from bidding upon, or otherwise obtaining, any property which is unneeded or surplus by the city unless that employee or officer can satisfactorily demonstrate to the manager, or city council, if the person is an appointed or elected municipal officer ~~[employee is a manager, city attorney, or city clerk]~~, that no reasonable conclusion could be made that the person ~~[employee]~~ possessed knowledge about the property which would not be readily obtainable or observable to a member of the general public.”

Section 5: New Section. A new section, to be numbered 2.05.115, entitled “Representation of council position,” is added to Title 2, Chapter 05, of the Ketchikan Municipal Code, to read as follows:

“2.05.115 Representation of council position.

(a) An elected municipal officer shall not falsely represent himself or herself as being the official authorized spokesperson for the city council on a given issue.

(b) An elected municipal official giving a personal opinion or speaking as an official spokesperson of the city council on an issue shall not intentionally misrepresent the official position of the city council.”

Section 6: Amendment. Section 2.05.120 of the Ketchikan Municipal Code, entitled, “Aiding a violation prohibited,” is hereby amended to read as follows:

“2.05.120 Aiding a violation prohibited.

It is a violation of this chapter for a municipal officer or a public employee to knowingly aid another public employee in violation of this chapter. Such aiding a violation will be considered misconduct on the part of such municipal officer or employee.”

Section 7: Amendment. Section 2.05.130 of the Ketchikan Municipal Code, entitled, “Declaration of potential violations by public employees,” is hereby amended to read as follows:

2.05.130 Declaration of potential violations [~~by public employees~~].

“(a) A [~~municipal officer or a~~] public employee other than an appointed municipal officer who is involved in a matter that may result in violation of KMC 2.05.060 through 2.05.130 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~~] employee’s supervisor who shall report the matter to the city manager.

(b) [~~A public employee’s~~] The city manager shall make a written determination whether an employee’s involvement violates KMC 2.05.060 through 2.05.130. If the manager [~~supervisor~~] determines that a violation could exist or will occur, the manager [~~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) An elected or appointed municipal officer who ~~[The manager may request guidance from the city attorney when determining whether a public employee]~~ is involved in a matter that may result in a violation of KMC 2.05.060 through 2.05.130 **shall:**

(1) Refrain from taking any official action relating to the matter until a determination is made under KMC 2.05.150.

(2) Disclose the matter to the mayor and council under KMC 2.05.150

(d) The manager or the mayor, or council may request guidance from the city attorney or independent counsel, when the city attorney is the person who may be involved, in determining if a public employee, a municipal officer (including elected and appointed municipal officers) is involved in a matter that may result in a violation of KMC 2.05.060 through 2.05.130.”

Section 8: Amendment. Section 2.05.140 of the Ketchikan Municipal Code, entitled, “Violations – Penalties for misconduct,” is hereby amended to read as follows:

“2.05.140 Violations – Penalties for misconduct.

(a) If a ~~[municipal officer]~~ or a public employee **other than an appointed municipal officer** has been found to have violated this chapter, the manager **or the city attorney or city clerk in respect to employees in their departments** or the city council in the case of **an elected or appointed municipal official** ~~[the employee being a manager, city attorney, or city clerk]:~~

(1) Shall order the **person** ~~[employee]~~ in writing to stop engaging in any official action related to the violation;

(2) May order divestiture, restitution, or forfeiture;

(3) May, **except in the case of an elected municipal officer** take disciplinary action, including reprimand, demotion, suspension, or dismissal. This

does not prohibit the review of a disciplinary action in the manner prescribed by personnel rules, ~~an~~ applicable collective bargaining agreements, or other contractual arrangements.

(4) In the case of an elected municipal official, a majority of the other members of the council may, upon notice and an opportunity to be heard, issue such form of censure as deemed appropriate and require appropriate remedial action such as the return or other disposition on any inappropriately received benefit.

(5) Request the city attorney to exercise all legal and equitable remedies available to the city to seek whatever relief is appropriate.

(b) If a former municipal officer or public employee has been determined to have violated this chapter, the manager, or city council in the case of the former employee being a manager, city attorney, or city clerk, shall:

(1) Upon notice and an opportunity to be heard ~~[f]~~ issue a public statement of findings, conclusions, and recommendations; and

(2) Request the city attorney to exercise all legal and equitable remedies available to the city 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 city to seek civil or contractual remedies against any such officer or employee and shall not limit prosecution or action under any other law or policy.

Section 9: Amendment. Section 2.05.150 of the Ketchikan Municipal Code, entitled, “Conflict of interest,” is hereby amended to read as follows:

“2.05.150 Conflict of interest~~[-Elected city officials].~~

(a) Except as provided herein, a~~[n-elected]~~ municipal officer may not participate in any official action in which the officer or a member of the officer’s immediate family has a substantial personal or financial interest. For purposes of this section participation shall not include discussing the matter with municipal officers ~~[city officials]~~ or addressing the city council as a private citizen, but shall

include voting and participating in the debate as a councilmember.

(b) A~~n elected~~ municipal officer shall disclose any substantial financial or personal interest in any matter before the council, prior to discussing, debating or voting upon the matter.

(c) Any elected municipal officer may make inquiry as to any financial or personal interest of another municipal officer in the matter before the council prior to the other officer discussing, debating or voting upon the matter.

(d) After a~~n elected~~ municipal officer has made known any substantial financial or personal interest in any question to be voted upon by the council:

(1) The officer shall ask to be excused from the discussion, debate, vote and any official action on that matter;

(2) The presiding officer shall rule on the request,

(3) The decision of the presiding officer shall be final unless overridden by a majority vote of the council.”

In the event that the elected municipal officer with a substantial financial or personal interest is the presiding officer, the request shall be ruled upon by a vote of the council. An officer may not participate in the matter if the presiding officer or council determines that the financial or personal interest is substantial.

Section 10: New Section. A new section, to be numbered 2.05.155, entitled “Complaints,” is added to Title 2, Chapter 05, of the Ketchikan Municipal Code, to read as follows:

“2.05.155 Complaints.

(a) Any person may file a complaint with the city attorney, under oath and in writing, of a violation by a municipal officer or employee. The city attorney shall provide a copy of the complaint to the municipal officer or employee. A complaint may not be filed under this section more than two years after discovery of the alleged violation.

(b) If, after investigation, it appears that further proceedings are not warranted, the city attorney or independent counsel shall communicate disposition of the

matter promptly to the complainant and to the subject of the complaint.

(c) Before the referral of a matter to the council under subsection (d)(1) of this section or dismissal under subsection (b) of this section, information regarding an investigation conducted under this chapter, or obtained by the city attorney or independent counsel during the investigation, is confidential to the extent permitted by law. Matters referred to the city manager under section (d)(2) of this section shall be kept confidential as provided by law and applicable personnel rules and collective bargaining agreements. The city attorney or independent counsel shall advise all persons contacted during the course of an investigation that they shall maintain confidentiality regarding the existence of the investigation. It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation. The subject of the complaint may, in writing, waive the confidentiality protection authorized by this section.

(d) If the city attorney or independent counsel determines that there is probable cause to believe that a violation of this chapter has occurred, the city attorney or independent counsel shall:

(1) In the case of an elected or appointed or a former elected or appointed municipal officer, refer the matter to the city council for consideration under Section 2.15.140;

(2) In the case of a public employee or former public employee other than an appointed municipal officer, refer the matter to the manager under Section 2.15.140.”

Section 11: Amendment. Section 2.05.160 of the Ketchikan Municipal Code, entitled, “Definitions,” is hereby amended to read as follows:

“2.05.160 Definitions.

For purposes of this chapter the following terms shall be defined as set forth

herein:

“Appointed municipal officer” means the city or KPU manager, the city clerk and the city attorney.

“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.

“Business” means 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.

“Child” includes a biological child, an adoptive child, and a stepchild.

“Elected municipal officer” means the mayor or council members.

“Fiduciary obligation” means a duty of loyalty to an organization or person which obligates one to act in the best interests of that party.

“Financial interest” means an expectation of or the receipt of a pecuniary or material benefit. An **officer** [official] or employee shall be deemed to have a financial interest in the affairs of:

- (1) Members of his/her immediate family;
- (2) A firm, partnership, or association of which such **officer** [official] or employee is a member or employee;
- (3) A corporation of which such officer or employee is an **officer** [official], director, or employee;
- (4) A corporation any stock of which is owned or controlled directly or indirectly by such **officer** [official] or employee: **except for stock traded on public stock exchanges or where less than five percent of the outstanding stock of the corporation is controlled directly or indirectly by such official or employee or a member of their immediate family.**

~~A substantial financial interest does not exist in:~~

~~(1) An action relating to a person, firm, corporation or association in which an official or employee has an interest solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such action and the duties of employment do not directly involve any matter related to such action;~~

~~(2) The stock of the corporation in which the official or employee has an interest is traded on public stock exchanges, or less than five percent of outstanding stock of the corporation is controlled directly or indirectly by such official or employee, or member of the immediate family;~~

~~(3) A matter in which the pecuniary or material benefit expected or received is such that it would not reasonably be expected to affect the actions or judgments of the officer or employee concerned.~~

~~“Immediate family member of a public employee” means: anyone related to the employee by blood, marriage, or adoption, or who lives in that person’s household.~~

(1) The spouse of the person;

(2) A regular member of the person’s household;

(3) A child, including a stepchild and an adoptive child, of the person and the spouse of any such child;

(4) A parent, sibling, grandparent, grandchild, aunt, or uncle of the person; and

(5) A parent or sibling of the person’s spouse.

“Manager” means the city manager or KPU manager.

~~——“Mother or father” includes a biological parent, an adoptive parent, and a stepparent.~~

“Municipal officer” or “officer” means, **the** mayor, **a** council member, **the** city clerk and **the** city attorney, or **the** person hired as **city or KPU** manager assistant manager, or director of a division or department within the city or KPU.

“Official action” means a recommendation, decision, approval, disapproval, or other similar action, or withholding action where the person has

a duty to act.

“Organization” means a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit.

“Parent” means a biological parent, an adoptive parent, and a stepparent.

“Person” means a natural person, a business, and an organization.

“~~A~~ p Personal interest” is an expectation by an officer or employee as an individual in his private capacity of a nonpecuniary or nonmaterial benefit or advantage or disadvantage which is not available or applicable to the general public and includes an interest held or involvement by a municipal officer or employee or their immediate family members, including membership in any organization, from which, or as a result of which, a person or organization receives a benefit. An officer or employee shall be deemed to have a personal interest in the affairs of any person if they owe a fiduciary obligation to that person.

“Public employee or employee” means any person employed by general city government or KPU, whether full-time or part-time, temporarily or permanently.

“Self-employment” includes all activities or acts, personal, professional, or corporate, engaged in or caused to be engaged in, or following or engaging in a trade, profession, or business, including receipts from advertising services, rental of personal property, construction, processing, or manufacturing, and including fisheries businesses, fishermen, liquor licenses, insurance businesses, mining, and coin-operated amusement and gaming machines, but excluding rental of real property, calling or vocation, with the object of financial or pecuniary gain, profit or benefit, either direct or indirect, and not exempting subactivities producing marketable commodities or services used or consumed in the main business activity, each of which subactivities shall be considered business; the giving or supplying of services as an employee and the furnishing of property, services, substances, or things, by a person who does not represent to be regularly engaging in those

transactions, does not constitute business under the meaning of this chapter.

“Source of income” means the entity for which service is performed 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, the person’s spouse or children, or a combination of them, hold a controlling interest, the source is the client or customer of the proprietorship, partnership, or corporation.

“Substantial financial interest or personal interest” whether the financial or personal interest disclosed is substantial shall be determined on a case-by-case basis, with evaluation and balancing of these factors:

(1) Whether the financial or personal interest is a substantial part of the matter under consideration.

(2) Whether the financial or personal interest directly and substantially varies with the outcome of the official action.

(3) Whether the financial or personal interest is immediate and known or conjectural and dependent on factors beyond the official action.

(4) Whether the financial or personal interest is significant monetarily.

(5) Whether the financial or personal interest is of a type which is generally possessed by the public or a large class of persons to which the person belongs.

(6) Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.

Section 12: New Section. A new section, to be numbered 2.05.175, entitled “Relationship to other laws,” is added to Title 2, Chapter 05, of the Ketchikan Municipal Code, to read as follows:

“2.05.175 Relationship to other laws.

The procedures and penalties provided in this chapter are supplemental and do not limit either the power of the city to otherwise discipline municipal officers 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 municipal officers 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.”

Section 13: Effective Date. This ordinance is effective one (1) month after its final passage and publication.

PASSED ON FIRST READING _____.

FINAL PASSAGE _____.

Robert Sivertsen, Mayor

ATTEST:

Kim L. Stanker
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE DATE: *			
ROLL CALL	YEA	NAY	ABSENT
BERGERON			
BRADBERRY			
KIFFER			
FLORA			
GAGE			
GASS			
ZENGE			
MAYOR			

Chapter 2.05**CODE OF ETHICS****Sections:**

- 2.05.010 Declaration of policy.
- 2.05.020 Scope of code.
- 2.05.025 Financial disclosure by the manager and elected officials.
- 2.05.030 Report of financial and business interests.
- 2.05.040 Failure to report.
- 2.05.050 Prohibited acts.
- 2.05.060 Improper gifts.
- 2.05.070 Improper use or disclosure of information.
- 2.05.080 Improper influence in grants, contracts, or leases.
- 2.05.090 Outside employment restricted.
- 2.05.100 Restrictions on employment after leaving city service.
- 2.05.110 Restriction on obtaining surplus city property.
- 2.05.120 Aiding a violation prohibited.
- 2.05.130 Declaration of potential violations by public employees.
- 2.05.140 Violations – Penalties for misconduct.
- 2.05.150 Conflict of interest – Elected city officials.
- 2.05.160 Definitions.
- 2.05.170 Conflict with collective bargaining agreement.
- 2.05.180 Conformity to law.

2.05.010 Declaration of policy.

(a) The city council declares that public employment is a public trust that should be free from the danger of conflict of interest. It is declared that high ethical standards among public employees are essential to the conduct of city government. It is further declared that holding public employment is a public trust and that, as one safeguard of that trust, the people require public employees to adhere to a code of ethics.

(b) The purposes of this chapter are:

- (1) To set reasonable standards for elected municipal officers and city employees;
- (2) To discourage public employees from acting upon a private or business interest in the performance of a public duty;
- (3) To assure that municipal officers in their official acts are free of the influence of undisclosed private or business interests;
- (4) To develop public confidence in persons seeking or holding public employment or municipal office.

2.05.020 Scope of code.

The city council holds that any effort by a municipal officer or public employee which is intended to unduly benefit his/her personal or financial interest through his/her official action is a violation of the public trust. As long as it does not interfere with the full and faithful discharge of an employee's public duties and responsibilities, this chapter does not prevent an employee from following other independent pursuits.

2.05.025 Financial disclosure by the manager and elected officials.

(a) The form of financial disclosures required by Section 2-17 of the City Charter shall require the following information:

(1) The source of all income over \$5,000 during the preceding calendar year, including taxable and nontaxable capital gains, received by the person, the person's spouse, or the person's dependent child, except that a source of income that is a gift must be included if the value of the gift exceeds \$250.00;

(2) The identity, by name and address, of each business in which the person, the person's spouse, or the person's dependent child has an interest or was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year, except that an interest of less than \$5,000 in the stock of a publicly traded corporation need not be included;

(3) The identity and nature of each interest in real property, including an option to buy, owned at any time during the preceding calendar year by the person, the person's spouse, or the person's dependent child;

(4) The identity of each trust or other fiduciary relation in which the person, the person's spouse, or the person's dependent child held a beneficial interest exceeding \$5,000 during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(5) Any loan or loan guarantee of more than \$5,000 made to the person, the person's spouse, or the person's dependent child, and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the person, the person's spouse, or the person's dependent child owed more than \$5,000. This subsection requires disclosure of a loan, loan guarantee, or indebtedness only if the loan or guarantee was made, or the indebtedness incurred, during the preceding calendar year, or if the amount still owing on the loan, loan guarantee, or indebtedness was more than \$5,000 at any time during the preceding calendar year;

(6) A list of all contracts and offers to contract with the state or an instrumentality of the state during the preceding calendar year held, bid, or offered by the person, the person's spouse, or the person's dependent child, a partnership or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse, or dependent children, or a combination of them, hold a controlling interest; and

(7) A list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the person, the person's spouse, or the person's dependent child, a partnership or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse or dependent children, or a combination of them, holds a controlling interest.

(b) The financial disclosure form described in subsection (a) of this section shall be filed as required by Section 2-17 of the City Charter and annually with the city clerk on or before April 15th.

(c) The city shall determine such exemptions from the financial disclosure requirements as the Alaska Public Offices Commission and staff were required to determine under regulations existing in 2006. (Ord. 1606 § 1, 2008)

2.05.030 Report of financial and business interests.

(a) The statements required of the city manager and elected municipal officers by AS 39.50.020 and 39.50.030 with such exemptions and additional definitions set forth in 2 AAC 50 or as may hereafter become effective are hereby also required of the following municipal officers:

- (1) The manager of the Ketchikan public utilities;
- (2) The city attorney;
- (3) The city clerk;
- (4) The assistant city manager;
- (5) The director of public works and director of finance;
- (6) The division heads of all divisions of Ketchikan public utilities; and
- (7) The Ketchikan public utilities administrative manager and the head of the engineering department at Ketchikan public utilities.

(b) The report shall be filed within 30 days after taking office and annually thereafter on or before April 15th of each year. The report shall be filed with the city clerk and shall be a public record available for public inspection and copying.

2.05.040 Failure to report.

A municipal officer who refuses or fails to file the statement required under this chapter shall be disciplined and may be penalized up to and including removal from office.

2.05.050 Prohibited acts.

A municipal officer or other public employee may not:

(a) Use or attempt to use his/her office or position for the purpose of obtaining personal financial gain or financial gain for himself/herself, for an immediate family member, or for a business in which the officer or employee is associated or owns stock;

(b) Intentionally secure or grant unwarranted benefits or treatment for any person;

(c) Use or attempt to use his/her office or position to seek other employment, business or contracts;

(d) Accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the city;

(e) Use city property, city equipment or other city facilities without authorization to benefit his/her financial or personal interests;

(f) Take or withhold official action in order to affect a matter in which the public officer or employee has a substantial personal or substantial financial interest;

(g) Attempt to benefit a personal or financial interest through coercion of a subordinate.

2.05.060 Improper gifts.

A municipal officer or public employee may not solicit, accept, receive, directly or indirectly, a gift, or a promise to give, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, or in any other form, that benefits the personal or financial interests of the officer, employee or his/her immediate family under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment, or is intended as a reward for any official action by the officer or employee. Payment of meal expenses in conjunction with occasional business meetings or occasional social gatherings shall not be considered a gift under this chapter. Gifts with an apparent value of \$50.00 or more given by anyone other than an immediate family member who has, during the preceding year, done business with the officer or employee in his/her official capacity shall be rebuttably presumed to have been given for the purpose of influencing the performance of official duties, actions or judgment or as a reward for official action taken by the officer or employee. An officer or employee who receives a gift which is subject to the presumption set forth in the preceding sentence or which is prohibited by this section shall within 30 days from the receipt of the gift report to his immediate supervisor the name of the giver, a description of the gift, the relationship of the giver, and any facts which rebut the presumption. In the event the recipient of the gift is an elected official such report shall be filed with the city clerk. A designated supervisor or councilmember may request guidance from the city attorney concerning whether acceptance of a particular gift is prohibited. The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.

2.05.070 Improper use or disclosure of information.

(a) A current or former municipal or public employee may not disclose or use information gained in the course of, or by reason of, the officer's or employee's official duties that could in any way result in the receipt of any substantial personal or substantial financial benefit for the officer or employee or his/her immediate family member unless the information has also been disseminated to the public.

(b) A current or former municipal officer or public employee may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential.

2.05.080 Improper influence in grants, contracts, or leases.

(a) Unless otherwise excepted by this chapter, a municipal officer or public employee, or immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a substantial personal or substantial financial interest in a city grant, contract, or lease if the municipal officer or public employee may take or withhold official action that affects the award, execution, or administration of the city grant, contract, or lease;

(b) The prohibition in subsection (a) of this section does not apply to a city grant, contract, or lease competitively solicited unless the employee:

(1) Is employed by the department or division awarding the grant, contract, or lease, or is employed by the department or division for which the grant, contract, or lease is let;

(2) Takes official action with respect to the award, execution, or administration of the grant, contract, or lease;

(c) A public employee shall report in writing to his/her designated supervisor any personal or financial interest held by the employee, or an immediate family member, in a city grant, contract, or lease that is awarded, executed, or administered by the department or division served by the employee.

2.05.090 Outside employment restricted.

Public employees shall not engage in any employment or self-employment which is incompatible with or in conflict with his/her public employment. A public employee who wishes to engage in other employment or self-employment shall request prior approval from the manager. If the manager determines that the employment is not incompatible and is not in conflict with the proper discharge of official duties, the manager may give approval, with such approval in writing. Any change in an employee's approved outside service or employment activity must be reported to the manager as it occurs. If the employee is the city manager, KPU manager, city attorney, or city clerk, the employee shall request approval from the city council, which will have the responsibility for determining compatibility, and, upon a determination that the services or employment are not incompatible or in conflict with official duties, may approve the services or employment.

2.05.100 Restrictions on employment after leaving city service.

(a) A manager, assistant manager, department or division head, or city attorney who leaves city service may not, for a period of one year after leaving city employment, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the department in which that employee served, and in which the employee participated personally and substantially through the exercise of official action.

(b) Such person may not be employed for one year after leaving city service by any person, firm, or corporation with whom the city conducted substantial business. For the purposes of this subsection, "substantial business" means in excess of \$100,000 in any 12-consecutive-month period in the preceding two years.

(c) This section does not prohibit the city from contracting with a former employee to act on a matter on behalf of the city.

(d) The manager may waive application of this section after determining that the former public employee's actions under subsection (a) or (b) of this section are not adverse to the public interest. The waiver must be in writing and a copy must be provided to the city attorney for review and recommendation. In the event that the former public employee was a manager, city attorney, or city clerk such approval or disapproval shall be made by the city council.

2.05.110 Restriction on obtaining surplus city property.

A municipal officer or a public employee is prohibited from bidding upon, or otherwise obtaining, any property which is unneeded or surplus by the city unless that employee can satisfactorily demonstrate to the manager, or city council, if the employee is a manager, city attorney, or city clerk, 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.

2.05.120 Aiding a violation prohibited.

It is a violation of this chapter for a municipal officer or a public employee to knowingly aid another public employee in violation of this chapter. Such aiding a violation will be considered misconduct on the part of such employee.

2.05.130 Declaration of potential violations by public employees.

(a) A municipal officer or a public employee who is involved in a matter that may result in violation of KMC 2.05.060 through 2.05.130 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) A public employee's manager shall make a written determination whether an employee's involvement violates KMC 2.05.060 through 2.05.130. 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 manager may request guidance from the city attorney when determining whether a public employee is involved in a matter that may result in a violation of KMC 2.05.060 through 2.05.130.

2.05.140 Violations – Penalties for misconduct.

(a) If a municipal officer or a public employee has been found to have violated this chapter, the manager, or the city council in the case of the employee being a manager, city attorney, or city clerk:

(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 municipal officer or public employee has been determined to have violated this chapter, the manager, or city council in the case of the former employee being a manager, city attorney, or city clerk, shall:

(1) Issue a public statement of findings, conclusions, and recommendations; and

(2) Request the city attorney to exercise all legal and equitable remedies available to the city 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 city to seek civil or contractual remedies against any such officer or employee and shall not limit prosecution or action under any other law or policy.

2.05.150 Conflict of interest – Elected city officials.

(a) Except as provided herein an elected municipal officer may not participate in any official action in which the officer or a member of the officer's immediate family has a substantial financial interest. For purposes of this section participation shall not include discussing the matter with city officials or

addressing the city council as a private citizen, but shall include voting and participating in the debate as a councilmember.

(b) An elected municipal officer shall disclose any substantial financial interest in any matter before the council, prior to debating or voting upon the matter.

(c) After an elected officer has made known any substantial financial interest in any question to be voted upon by the council:

- (1) The officer shall ask to be excused from the debate and vote on that matter;
- (2) The presiding officer shall rule on the request;
- (3) The decision of the presiding officer shall be final unless overridden by a majority vote of the council.

In the event that the elected officer with a substantial financial interest is the presiding officer, the request shall be ruled upon by a vote of the council. An officer may not participate in the matter if the presiding officer or council determines that the financial interest is substantial.

2.05.160 Definitions.

For purposes of this chapter the following terms shall be defined as set forth herein:

“A personal interest” is an expectation by an officer or employee in his private capacity of a non-pecuniary or nonmaterial benefit or advantage which is not available to the general public.

“Child” includes a biological child, an adoptive child, and a stepchild.

“Financial interest” means an expectation of or the receipt of a pecuniary or material benefit. An official or employee shall be deemed to have a financial interest in the affairs of:

- (1) Members of his/her immediate family;
- (2) A firm, partnership, or association of which such official or employee is a member or employee;
- (3) A corporation of which such official or employee is an officer, director, or employee;
- (4) A corporation any stock of which is owned or controlled directly or indirectly by such official or employee.

A substantial financial interest does not exist in:

(1) An action relating to a person, firm, corporation or association in which an official or employee has an interest solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such action and the duties of employment do not directly involve any matter related to such action;

(2) The stock of the corporation in which the official or employee has an interest is traded on public stock exchanges, or less than five percent of outstanding stock of the corporation is controlled directly or indirectly by such official or employee, or member of the immediate family;

(3) A matter in which the pecuniary or material benefit expected or received is such that it would not reasonably be expected to affect the actions or judgments of the officer or employee concerned.

“Immediate family of a public employee” means anyone related to the employee by blood, marriage, or adoption, or who lives in that person’s household.

“Manager” means the city manager or KPU manager.

“Mother or father” includes a biological parent, an adoptive parent, and a stepparent.

“Municipal officer” or “officer” means mayor, councilmember, city clerk and city attorney, or person hired as manager, assistant manager, or director of a division or department within the city or KPU.

“Public employee” means any person employed by general city government or KPU, whether full-time or part-time, temporarily or permanently.

“Self-employment” includes all activities or acts, personal, professional, or corporate, engaged in or caused to be engaged in, or following or engaging in a trade, profession, or business, including receipts from advertising services, rental of personal property, construction, processing, or manufacturing, and including fisheries businesses, fishermen, liquor licenses, insurance businesses, mining, and coin-oper-

ated amusement and gaming machines, but excluding rental of real property, calling or vocation, with the object of financial or pecuniary gain, profit or benefit, either direct or indirect, and not exempting subactivities producing marketable commodities or services used or consumed in the main business activity, each of which subactivities shall be considered business; the giving or supplying of services as an employee and the furnishing of property, services, substances, or things, by a person who does not represent to be regularly engaging in those transactions, does not constitute business under the meaning of this chapter.

“Source of income” means the entity for which service is performed 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, the person’s spouse or children, or a combination of them, hold a controlling interest, the source is the client or customer of the proprietorship, partnership, or corporation.

2.05.170 Conflict with collective bargaining agreement.

In the event any section or provision of this chapter conflicts with an applicable collective bargaining agreement for a public employee, the collective bargaining agreement shall control with respect to that employee.

2.05.180 Conformity to law.

If any section or provision of this chapter is held to be contrary to law by a court of competent jurisdiction or by action of the Alaska State Legislature, that section or provision shall be deemed invalid. All other sections and provisions of this chapter shall continue in full force and effect. (Ord. 1226 § 1, 1992)