



MUNICIPALITY OF ANCHORAGE
Board of Ethics

September 2, 2022

Subject: *Ethics Complaint for Potential Violation 2021-12*

Allegation: Violation of AMC 1.15.060; 1.15.100 – Conflict of Interest; Not Disclosing Conflict of Interest.

On October 27, 2021, the Board of Ethics (“the Board”) received Ethics Complaint for Potential Violation 2021-12 (“the Complaint”). The Complaint alleged several potential violations of the Municipal Code of Ethics by three members of an elected body, the Girdwood Board of Supervisors (“GBOS”) (together “Respondents”). In broad terms, the Complaint alleged that members of GBOS: (1) failed to disclose conflicts of interest before taking an official action in violation of AMC 1.15.060; (2) failed to file written disclosures of economic interest in violation of AMC 1.15.100; and (3) failed to follow proper procedure regarding disclosed conflicts of interest in violation of AMC 1.15.060. The Board’s report¹ addressed each of these potential violations in turn.

I. Respondents’ Alleged Failures to Disclose Conflicts of Interest Prior to Official Action (AMC 1.15.060)

A. Conflicts of Interest – Disclosure Requirement

A public servant is required to disclose interests – either financial or private – prior to taking an official action in which those interests may be implicated. Under AMC 1.15.060(D), a public servant “shall not participate in an official action in which the public servant . . . has a substantial financial or private interest. Prior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.”²

¹ This is a summarized version of the report that was changed to protect the confidentiality of persons involved pursuant to AMC 1.15.160(E).

² Though the Complaint alleged a violation of AMC 1.15.060, the Board notes that at least one Respondent focused instead on AMC 1.15.080, which describes when an elected official must disclose that he or she serves on the board of an organization that receives municipal funding. (AMC 1.15.080: “Elected official . . . may serve without compensation as voting or non-voting

A financial interest is defined in AMC 1.15.180(H) as, “the receipt of a pecuniary benefit and the expectation of receiving a pecuniary benefit.” In addition, the Code explains that a public servant “has a financial interest in an organization if the person . . . is a director, officer, or employee of the organization.” A private interest is defined in AMC 1.15.180(O) as “an interest affecting, belonging, or accruing to an individual or private entity as distinct from the public interest at large.”

Not all financial or private interests will disqualify a public servant from taking an official action. Rather, a public servant cannot participate in an official action in which he or she has a “substantial” financial or private interest. The Code explains that the determination of whether a disclosed interest is substantial must be made on a “case-by-case basis” depending on a number of factors.³ For elected officials, the decision whether a financial or private interest in an official action is substantial is left to the discretion of the body on which the official is a member.⁴ Accurate disclosure of potential conflicts is crucial to this process. To repeat from a prior Board opinion: “The interest must be disclosed, regardless of whether the public official believes the interest to be insignificant.”⁵

B. The Official Action

members of a charitable nonprofit organization receiving funding from the municipal . . . budget . . . “The elected official shall disclose the board member service before participating in official action by the municipality on the budget or other matter involving the board or commission of a public body or charitable nonprofit organization.”)

The Board appreciates Respondents’ attention and adherence to this provision of the Code, but encourages the Respondents not to confuse the disclosure requirements under AMC 1.15.080 with those of AMC 1.15.060, which may be broader.

³ See AMC 1.15.060(E), listing the following factors: “1. Whether the financial or private interest is a substantial part of the matter under consideration. 2. Whether the financial or private interest directly and substantially varies with the outcome of the official action. 3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action. 4. Whether the financial or private interest is significant monetarily. 5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the member belongs. 6. Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.”

⁴ AMC 1.15.060(F)(2).

⁵ Response to Request for Advisory Opinion 2018-5, at 2.

To determine whether the GBOS Respondent’s various positions and affiliations with other entities should have been disclosed as potential conflicts of interest, it is necessary first to identify the official action at issue. The official action that the Complaint alleges should have triggered disclosures occurred at the August 16, 2021, GBOS meeting. The action, listed at agenda item 9, was discussion and a vote on the “[Girdwood Trails Committee] request for approval of Huddle AK proposal to complete the Girdwood Trails Master Plan @ \$22,680 from the Parks and Rec 406 account.” Because the context and implications of this action are not obvious, this opinion will give some background.

Along with information in the written Complaint, both the Complainant and the Respondent provided details about this agenda item to the Board during the Board’s April 20, May 18, and May 26 meetings.⁶ According to these accounts, funding in the amount of approximately \$25,000 had previously been authorized by the GBOS for a contractor (Huddle AK) and a Trails Plan Subcommittee to work on – and solicit public input about – the Girdwood Trails Plan (GTP).⁷ As the GBOS August 16 meeting minutes explain: “Huddle AK has worked hard with GTP subcommittee to produce draft Girdwood Trails Master Plan. Project has taken several more meetings and more outreach than originally budgeted for. Additional funds are needed to complete the project. Of the \$22,680 that are needed, about \$11,300 are already spent. The other \$11,370 include additional subcommittee meetings.” Agenda item 9 was a discussion and vote on whether to fund this additional work.

The GBOS vote on agenda item 9 was to provide only part of the requested funding; a portion (\$11,310) that had already been spent. GBOS declined to authorize additional funding. The Complaint maintains this vote had the effect of dissolving the Trails Plan Subcommittee, eliminating planned future Subcommittee meetings and associated public participation, and

⁶ The Board cautions that this opinion is based on information the Board received or is otherwise readily-available (i.e., on an organization’s public website). If the facts presented to the Board were inaccurate, incomplete, or outdated, the conclusions in this opinion could differ.

⁷ According to a Muni website, “The Girdwood Trails Plan (GTP) is a concerted effort bringing the community together for a holistic conversation about the future of the Girdwood trail and natural space system. As a 10-15 year guiding document for the community, local trail and open space organizations, agencies, and elected officials, the GTP defines the Girdwood trail network and identifies trail and natural space projects that are supported by the community. See: [https://www.muni.org/Departments/operations/streets/Service/Pages/Girdwood-Trails-Plan.aspx#:~:text=The%20Girdwood%20Trails%20Plan%20\(GTP,trail%20and%20natural%20space%20system](https://www.muni.org/Departments/operations/streets/Service/Pages/Girdwood-Trails-Plan.aspx#:~:text=The%20Girdwood%20Trails%20Plan%20(GTP,trail%20and%20natural%20space%20system) (last visited 7/10/22).

leaving only the contractor and a single staff person to continue to develop the GTP. According to the Complaint, this “ultimately radically changed the trajectory of the [GTP],” such that “the [GTP] as released in October 2021 included “significant degradation of the previous status that primitive trail natural spaces held in the plan.” The Complainant further explained to the Board that in developing the GTP, there is a tension between those who want more developed trail systems (for skiing, biking, multi-use, etc.), and those who want to explicitly set aside “open space” or “primitive trail natural space” in the GTP. The Complainant believes that the vote declining to fund additional work by the Trails Plan Subcommittee was a “win” for the first group – proponents of prioritizing developed trails and minimizing or eliminating “open space” in the GTP.

In sum, the issue for the Board is whether each Respondent – because of his or her affiliation with a particular organization – had a private or financial interest in deciding whether to fund the continued development of the GTP with the Trails Plan Subcommittee, which allegedly had implications for the balance of developed trails vs. “open space” that would be included in the GTP.

With this in mind, this opinion will turn to each of the Respondents and their potential conflicts of interest that the Complaint states should have been disclosed. The three Respondents are referred to as Supervisor A, Supervisor B, and Supervisor C.

C. Respondent’s Potential Conflicts of Interest

1. Supervisor A / Girdwood Nordic Ski Club

First, the Complaint alleges that Supervisor A should have disclosed being a board member of the Girdwood Nordic Ski Club (GNSC). The Board concludes that Supervisor A’s position as a GNSC board member caused Supervisor A to have a private interest in the official action taken during the August 16 GBOS meeting that should have been disclosed under the Code.

A board member of an organization is assumed to have a duty to advance the interests of that organization. Put another way, if the GNSC had a private interest in the official action, then Supervisor A held that same interest as a board member of the organization.

The facts presented to the Board and gleaned from public sources indicate that the GNSC did have an interest in the August 16 vote on funding for the continued work of Trails Plan Subcommittee. GNSC is a nonprofit 501(c)(3) corporation that was “founded in 2008 with the vision of creating a world-class Nordic/Multi-Use trail system within the Girdwood Valley for

year-round enjoyment.”⁸ Specifically, the Complainant explained that around the time of the vote the GNSC had made public statements that their board would not vote for the GTP as written. In an email dated June 23, 2021, the GNSC encouraged public comment on the draft GTP, which it stated: “is a great step towards [GNSC’s] goal, but the current GNP does not align with our mission as it restricts the majority of open space in the valley and upper valley to primitive trails only.”

The Board concludes that the GNSC – and by virtue of her board member status Supervisor A – did have a private interest in relation to the official action taken at the August 16 GBOS meeting, and should have disclosed her GNSC board member status prior to the August 16 vote. Then, following her disclosure, the GBOS as a whole should have discussed and decided whether the interest was substantial.⁹ Supervisor A agreed at the Board’s May meeting that she likely should have disclosed that she was GNSC board member prior to the August 16 vote. The Board very much appreciates Supervisor A’s acknowledgment of this error, encourages her to continue to disclose even potential private or financial conflicts, and agrees with her suggestion that the GBOS receive ethics training in the near future.

2. Supervisor B / Girdwood Alliance

Second, the Complaint alleges Supervisor B should have disclosed being a board member and officer (Vice-Chair/Secretary) of the Girdwood Alliance (“GA”). GA is a private development organization in Girdwood. It describes itself as “represent[ing] a group of over 20 citizen volunteer board members who work to advance our mission and vision for Girdwood. Our mission is to advocate for Girdwood’s people, infrastructure and recreation, and our vision is that Girdwood is a mountain resort community with a high quality of life.”¹⁰ The Complaint states that: “the GA had submitted comments to the Girdwood Trails Plan stating opposition to a major portion of the trails plan.” Those comments, from the GA to the Girdwood Service Area Manager, included criticism of the GTP as it existed in January 2021, saying it had “over-integration and confusing use of the term ‘natural spaces’ . . . This is a Trails Master Plan, and while natural and open space

⁸ See <https://skigirdwood.org/> (last visited 7/10/22).

⁹ See AMC 1.15.060(E). The Board notes that it seems unlikely that Supervisor A’s interest was substantial. The identified private interest is the inclusion of Nordic and multi-use trails in the GTP, perhaps to the detriment of a conflicting interest in open spaces and primitive trails. But the official action – a vote on additional funding for continued subcommittee work on a draft plan – seem quite attenuated from advancing the GNSC’s interest in this instance.

¹⁰ See <https://girdwoodalliance.org/> (last visited 7/10/22).

is an important part of Girdwood’s trail system, the use of the term ‘natural spaces’ almost interchangeably with the term ‘trails’ is not appropriate for a trails plan.”¹¹

The Board acknowledges that Girdwood is a small, tight-knit community, and each resident might have a personal interest in the GTP, as well as business or community ties with people and organizations that may also have private or financial interests in the GTP. For a public servant to be required to disclose a potential conflict of interest that he or she has by virtue of affiliation with an organization, however, the organization must have some reasonably identifiable and uniform position that is relevant to the official action at issue.

The Board concludes that Supervisor B did not have to disclose his position as a board member and officer of GA because GA did not have an identifiable private interest in the August 16 vote. It is simply not possible to conclude from the information the Board has before it that the GA’s criticism of the GTP as drafted in January 2021 was related to the developed trails vs. open space issue, or that the GA did or would have taken a position as to whether the Trails Plan Subcommittee should have been funded to continue its work in August 2021.

3. Supervisors B and C / Imagine! Girdwood

Third, the Complaint alleges that Supervisors B and C should have disclosed that they were board members and officers (Secretary/Treasurer and Vice-President, respectively) for the organization Imagine! Girdwood (I!G). Supervisor B explained to the Board that all Girdwood residents and business owners are “members” of I!G. I!G describes itself as “the main organization advocating for a new [Girdwood Area Plan] to guide Girdwood’s future development.”¹² The I!G website states as a goal that: “Girdwood has a formal, established, maintained, and protected system of trails and natural spaces,” and includes as policies to “identify areas that are primarily recreation and natural space areas and manage them as such,” and to “support implementation of Girdwood trails and natural spaces plans.”

The Complaint maintains that Supervisor B publicly advocated on multiple occasions for the portions of the Trails Plan (e.g., open spaces) to be removed from the Trails Plan and instead be addressed by I!G in its work on the Area Plan. The GBOS meeting minutes from the August 16 meeting reflect that Supervisor B “expresse[d] that some of the work completed [by the

¹¹ Letter from GA to Kyle Kelly dated 1/13/21.

¹² See: <https://imagine-girdwood-huddle.hub.arcgis.com/> (last visited 7/10/22).

Subcommittee] is outside of the scope of a trails plan and falls instead under the Area Plan. He believes that the subcommittee's work is done and should not use more of the contractor time, he proposes approval of the funds already spent." The Complaint also states that I!G actively solicited funding from the Muni for their privately-developed Area Plan work, and elaborates that, "this potentially constitutes a significant interest in bringing elements into their scope which might otherwise be handled elsewhere (e.g. primitive trail natural space work), which if so could constitute an interest in the GTP public process not being completed or being abbreviated in some form."

The Board acknowledges that this is a bit of a close call. But, if in fact the Complaint is correct in asserting that open spaces were likely to be reduced or omitted in the GTP as a result of the August 19 GBOS vote declining to fully fund the continued work of the Trails Plan Subcommittee, then I!G – and by virtue of their positions, Supervisors B and C – did have a potential private and financial interest that should have been disclosed. The Board arrives at this conclusion even if I!G did not as an organization take a particular position on the "developed trails" vs. "open space" debate. If I!G was – as appears to be the case – advocating for certain work or areas to be taken out of the GTP and included instead in the Area Plan, which I!G manages and seeks funding to manage, then there is an (admittedly attenuated) possibility that a vote to reduce funding to the GTP trails subcommittee would funnel work, and thereby funding, to I!G, giving I!G – and in turn the GBOS Respondents – a private and financial interest in the August 16 vote. The Board therefore concludes that Supervisors B and C should have disclosed their positions with I!G and allowed the entire GBOS to discuss and determine whether the interests thereby created were substantial.¹³

The Board ends this portion of the opinion with a note. As the Code recognizes, minor conflicts are an inherent part of having public servants drawn from the society around them – this is especially true in a small community like Girdwood.¹⁴ But public officials should, as much as

¹³ Again, the interest here was likely not substantial under the factors in AMC 1.15.060(E). As described above, the connection between Supervisor B's position in I!G and the August 16 vote is extremely attenuated.

¹⁴ See AMC 1.15.060(A): "Minor or Substantial Conflict of Interest: The assembly recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government. Standards of ethical conduct need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interest that are substantial and material."

possible, avoid the appearance of impropriety, which is often mitigated by adopting a best practice of making disclosures in “close cases.” The Board emphasizes that while some of the failures to disclose alleged in the Complaint did violate the Code, the Board does not believe that any of the Respondents acted in bad faith, and does not issue this opinion with the intent to punish or deter people from public service. The Board thanks the Respondents for their service but encourages that they, like all public officials, should carefully consider disclosing reasonable potential conflicts – even if they seem rather remote to the action at hand – to avoid the appearance of impropriety and instill a sense of public trust and confidence in their important work.

II. Respondent’s Alleged Failure to File Written Disclosures of Economic Interest (AMC 1.15.100)

The fourth and fifth complaints allege that Supervisors B and C violated AMC 1.15.100 by not having written declarations on file (at the time of this complaint) related to I!G. AMC 1.15.100(A) states, “Within 30 days of commencement of service, a public servant shall submit a written disclosure of whether or not the public servant or member of the public servant’s immediate family or household has an economic interest in a municipal contract or in an entity engaging in business with the municipality. The disclosure shall be made to the municipal clerk in the form prescribed by the board of ethics.” While not required, it is prudent to update annual disclosures if one joins the leadership of an organization that acquires a potential interest in a city contract or a grant.

As stated above, Supervisor B and Supervisor C are both board members and officers of I!G, which as a private entity has solicited and is party to Municipal funds. The Board concludes that because I!G and its parent organization Girdwood Alliance solicited funding from the Municipality, it was necessary for Supervisor B and Supervisor C to file disclosures of economic interest. Municipal records indicate that they have not done so as of the issuance of this opinion; the Board advises that both Supervisors should file a written disclosure of economic interest with the Municipal Clerk as soon as possible.

In the future, the Board recommends Supervisor B and Supervisor C disclose any new board affiliations to the municipal clerk before they take official action as a GBOS Supervisor.

The Board also recommends that Supervisors B and C receive additional ethics training to clarify their obligations under this section of the Code.

III. Respondents' Alleged Failure to Follow Proper Procedure Regarding Disclosed Conflicts of Interest (AMC 1.15.060)

The sixth complaint alleges that Supervisor A violated AMC 1.15.060 at the October 18 GBOS meeting. Supervisor A acted as Chair of that meeting and ruled on her own declared potential conflict, as well as the potential conflict of Supervisor B. Both Supervisor A and Supervisor B declared they made financial contributions to Bikewood, which was related to Old Business Agenda item 6 at the October 18 GBOS meeting. Bikewood was a proponent organization requesting an official action from GBOS in supporting the Resolution of Support of proposed Girdwood Bike Park. Bikewood's, (also referred to as The Girdwood Mountain Bike Alliance) mission is "to develop and support opportunities for mountain biking by building and maintaining trails, promoting responsible trail use and advocating for cycling in [the Girdwood] community."¹⁵

The Board concludes that Supervisor A violated AMC 1.15.060F(2)(a). The Board commends Supervisor A for disclosing her financial contribution to Bikewood, which created a private or financial interest in the official action of voting on the Resolution of Support of proposed Girdwood Bike Park. Unfortunately, Supervisor A, as acting chair, did not offer an opportunity for the GBOS as a whole to discuss and decide if the disclosed interest was substantial. AMC 1.15.060F(2)(a) directs that, "Prior to comment, deliberation, or decision on a matter coming before the body, the member or official shall disclose the nature of the interest in sufficient detail to permit the other members of the body to determine if the interest is substantial." Because there is no evidence in the minutes and recording of the October 18 GBOS meeting that Supervisor A permitted members of GBOS to discuss and determine if the disclosed interests were substantial, the Board concludes that Supervisor A violated AMC 1.15.060F(2)(a).¹⁶ The Board recognizes that being a substitute Chair of a public meeting is a difficult job, and recommends additional

¹⁵ See <https://bikegirdwood.org/what-we-do> (last visited August 17, 2022).

¹⁶ Once again, it seems unlikely that this interest – a very small financial donation – would have been deemed substantial by the GBOS.

ethics training for Supervisor A, or for any GBOS member who is going to serve as Chair, on this and other procedural issues.

Approved by the Municipality of Anchorage Board of Ethics

Rebecca Windt Pearson, Chair

Aesha Pallesen, Vice Chair

Abram Goodstein

Terrence Kelly

Joan Wilson