




OFFICE OF THE OMBUDSMAN Memorandum

DATE: December 6, 2018

TO: Girdwood Board of Supervisors
Dee Ennis, Deputy Municipal Attorney

Cc: Kyle Kelley, Todd Sherwood

FROM: Darrel W. Hess, Municipal Ombudsman 

SUBJECT: Girdwood Board of Supervisors' Committees & Subcommittees

Two individuals recently filed a complaint with the Municipal Ombudsman's Office (OM20181684) regarding the Forest Loop Subcommittee of the Girdwood Board of Supervisors' (GBOS) Girdwood Trails Committee. The complainants alleged that members of the subcommittee had held multiple meetings that were not publically noticed, as required by the Alaska Open Meetings Act (AOMA). The complainants would like to see consideration given to voiding GBOS-related actions/approvals related to the proposed Forest Loop Trail.

The complainants expressed concern that the subcommittee's August 14, 2018 report, which was accepted by the GBOS, states that "All subcommittee meetings were publically noticed and held in the Girdwood Community Room and were open to the public. There was a period set aside at each meeting when public comments were taken (three minutes maximum per person). Emailed comments were accepted and read aloud." The complainants believe that this statement is incorrect and gives the false impression that no non-public subcommittee meetings were held.

During my review I determined:

Regarding GBOS-

- GBOS is an elected public body.
- GBOS meetings are subject to the requirements of the AOMA.
- GBOS meetings are subject to the requirements of AMC 1.25 – Public Meetings.
- Emails and documents exchanged by members of GBOS regarding GBOS business are subject to public information requests.
- Members of GBOS are covered by AMC 1.15 – Code of Ethics.
- Members of GBOS are subject to the jurisdiction of the Municipal Board of Ethics.

Regarding GBOS committees and subcommittees-

- GBOS committees and subcommittees are public bodies.
- GBOS committee and subcommittee meetings are subject to the requirements of the AOMA.
- GBOS committee and subcommittee meetings are subject to the requirements of AMC 1.25 – Public Meetings.
- Emails and documents exchanged by members of GBOS committees and subcommittees regarding committee and/or subcommittee business are subject to public information requests.
- Members of GBOS committees and subcommittees are not covered by AMC 1.15 –Code of Ethics.
- Members of GBOS committees and subcommittees are not generally subject to the jurisdiction of the Board of Ethics. However, the Board of Ethics is the Municipal body that reviews alleged violations of AMC 1.25 – Public Meetings.

Based on my review of the documents provided to me by the complainants, documents posted on muni.org and my conversations with Municipal staff, I originally determined that the members of the Forest Loop Subcommittee held multiple meetings, including at least one field trip, that were not publically noticed as required by the AOMA and AMC 1.25 – Public Meetings. However, based on further research and conversations with the Municipal Attorney’s Office, I realized that the complainants and I had been citing an old, outdated version of the AOMA. That version of the AOMA only required two members of an advisory body meeting to discuss business to constitute a meeting of the body.

An analysis of the older version of the law written by a private attorney is posted on the State of Alaska, Department of Natural Resources’ website. This is the document that the complainants provided to the subcommittee and the GBOS when they originally raised their concerns regarding potential AOMA violations. I pulled the version of the law that I was using from the “Alaska Legal Resource Center”, an online database. The version of the AOMA posted on the site is not the most current version, and contains inaccurate information regarding the number of members of the body being present that triggers the AOMA. The 2009 version requires the presence of “more than three members or a majority of the members, whichever is less...” A majority of the Forest Loop Subcommittee is four, which is the same number as “more than three members”, so the triggering number for the body is four.

In reviewing the complaint using the 2009 version of the AOMA, I determined that there are multiple emails and email chains with four or more members included, in which subcommittee members discuss subcommittee business. These are violations of the AOMA. I also found a reference to a May “group” site visit, which might have potentially been required to be noticed, depending on what was discussed during the excursion, and how many subcommittee members participated. For me the question is how much time and resources I should spend to investigate further, when there appears to have been no action taken at any of the meetings that were not properly noticed, and, while the Superior Court may void the actions of a public body taken at a meeting that does not conform to the requirements of the AOMA (if a lawsuit is filed within 180 days of the action taken by the body), this provision does not apply to bodies that only advise

and make recommendations, such as the GBOS, Forest Loop Subcommittee, and Girdwood Trails Committee. During my review, I determined that the GBOS meetings where the Subcommittee's report was considered and advanced were properly noticed as required by the AOMA and AMC 1.25. Persons can always ask the GBOS to reconsider their actions related to the Subcommittee's report, if they have issues with those actions.

My focus is on how to prevent future violations of the AOMA and AMC 1.25, not in assessing blame for what appear to be unintentional violations by volunteer members of the public. The Girdwood Land Use Committee operates as the community council for Girdwood (although GBOS itself has been designated as the community council ex-officio for Girdwood). Meetings of other community councils and their committees are not subject to the AOMA and AMC 1.25, and emails and documents exchanged between members of other community councils and their committees regarding council and committee business are not subject to a public information request. Given the large membership of the Girdwood Land Use Committee, and the fact that more than three members of the body meeting to discuss business of the body constitutes a meeting that needs to be publically noticed under the AOMA and AMC 1.25, there is the potential for a large number of AOMA and AMC 1.25 violations related to GBOS committees and subcommittees. This places the members of GBOS committees and subcommittees in situations that the members of other volunteer community groups in Anchorage don't have to be concerned with.

GBOS committees and subcommittees appear to be the only Municipal public bodies whose members are not covered by AMC 1.15 – Code of Ethics, or subject to the jurisdiction of the Board of Ethics. Consequently, members of GBOS committees and subcommittees are not required to file financial disclosure forms that members of all other Municipal public bodies (including boards and commissions) are required to file. However, the Ethics Board may review alleged violations of AMC 1.25. Municipal public bodies failing, even unintentionally, to comply with the requirements of the AOMA and AMC 1.25 undermine the public's confidence in those bodies and the public process.

Based on my review of this complaint, I recommend:

- That the GBOS amend the Forest Lop Subcommittee's report, dated August 14, 2018, to more accurately reflect the body's process, including serial email meetings and site visits that were not public and were not publically noticed, or delete the statement from the report. However, why would the GBOS not want the report to accurately reflect the subcommittee's work? Concerns regarding possible Alaska Open Meetings Act violations are already part of the public record. Not amending the report to more accurately reflect the process might potentially undermine the hard work of the subcommittee and community members who were part of the process.
- That the GBOS consider placing a statement on the agendas for all GBOS committee and subcommittee meetings, that will inform the members of the bodies and the public that meetings of the bodies are subject to the requirements of the Alaska Open Meetings Act and AMC 1.25 – Public Meetings.
- That members of GBOS committees and subcommittees receive training regarding the Alaska Open Meetings Act and AMC 1.25 – Public Meetings.

- That the Municipal Attorney's Office and/or the Board of Ethics consider whether or not AMC 1.15 – Code of Ethics should be revised to cover members of GBOS committees and subcommittees.

If you have any questions, you can contact me at HessDW@muni.org, or 907-343-4783.