

Chapter 01.45

CONFLICT OF INTEREST*

-
- * **Charter References:** Personal financial interests, § 15.1.
Cross References: Manager, CBJ Code ch. 03.05; departments, CBJ Code ch. 03.10; special offices, CBJ Code ch. 03.15; membership, CBJ Code ch. 11.10; plan, CBJ Code ch. 44.05.
State Law References: Conflict of interest, AS 29.20.010, 39.50.010 et seq., 39.50.090(d).
-

Article I. Standards of Conduct

- 01.45.005 Declaration of policy.
- 01.45.008 Scope of code.
- 01.45.010 Misuse of official position.
- 01.45.020 Gifts.
- 01.45.030 Improper use or disclosure of information.
- 01.45.040 Improper influence in municipal grants, contracts, leases, or loans.
- 01.45.050 Improper representation.
- 01.45.060 Outside employment restricted.
- 01.45.070 Restrictions on employment after leaving municipal service.
- 01.45.080 Aiding a violation prohibited.

Article II. Disclosures, Declarations and Complaints

- 01.45.090 Disclosures of conflicts by municipal employees.
- 01.45.100 Disclosures of conflicts by municipal officers other than employees.
- 01.45.110 Third party complaints of violations and potential violations.
- 01.45.115 City and borough attorney complaints of violations and potential violations.
- 01.45.120 City and borough attorney's advisory opinions.
- 01.45.130 Immunity.

Article III. Enforcement Procedures for Municipal Employees

- 01.45.145 Enforcement procedures for municipal employees.

Article IV. Enforcement Procedures for Municipal Officers Other Than Employees

- 01.45.147 Application of procedures.
- 01.45.150 Complaints.
- 01.45.160 Dismissal before formal proceedings.
- 01.45.170 Corrective or preventive action.
- 01.45.180 Confidentiality.
- 01.45.190 Probable cause; procedure.
- 01.45.200 Hearings.
- 01.45.210 Agency action.

Article V. Penalties and Remedies

- 01.45.240 Violations penalties for misconduct.
- 01.45.250 Actions voidable.
- 01.45.260 Criminal sanctions additional.

Article VI. General Provisions

- 01.45.300 Applicability.
- 01.45.320 Cooperation.
- 01.45.330 Construction.
- 01.45.340 Regulations.
- 01.45.350 Culpability.
- 01.45.360 Definitions.

ARTICLE I.

STANDARDS OF CONDUCT*

* **Charter References:** Assembly to adopt rules to prevent conflict of interest, § 15.1(C).

01.45.005 Declaration of policy.

It is declared that high moral and ethical standards among municipal officers are essential to the conduct of free government; and that the assembly believes that a code of ethics for the guidance of municipal officers will encourage those officers to avoid acting upon substantial personal interests or substantial financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this municipality in their municipal officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require municipal officers to adhere to a code of ethics.

(Serial No. 91-04, § 2, 1991)

01.45.008 Scope of code.

(a) The assembly affirms that each municipal officer holds office as a public trust, and any effort to benefit a substantial personal interest or a substantial financial interest through official action is a violation of that trust. The public trust and this chapter do not prohibit an officer from following independent pursuits, so long as those pursuits do not interfere with the full and faithful discharge of an officer's public duties. The assembly further recognizes that:

- (1) In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be entirely without personal and financial interests in the decisions and policies of government;
 - (2) Citizens who serve as municipal officers retain their rights to interests of a personal or financial nature; and
 - (3) Standards of ethical conduct for municipal officers need to distinguish between those inconsequential conflicts which are unavoidable in a free society, and those which are substantial and material.
- (b) There is no violation of this Code if, as to a specific matter, a municipal officer's:
- (1) Personal or financial interest in the matter is insignificant; or of a type that is possessed generally by the public or a large class of persons to which the municipal officer belongs;
 - (2) Action or influence would have an insignificant or conjectural effect on the matter; or
 - (3) Action consists of voting in favor of introduction of an ordinance.

(c) The City and Borough attorney, hearing officers, and hearing agencies shall be guided by this section when issuing opinions and reaching decisions.
(Serial No. 91-04, § 2, 1991; Serial No. 96-02, § 2, 1996)

01.45.010 Misuse of official position.

(a) A municipal officer may not use, or attempt to use, an official position in order to gain a benefit, and may not intentionally secure for, or grant to, any person unwarranted benefits, treatment or advantage.

(b) A municipal officer may not:

- (1) Seek other employment or contracts through the use or attempted use of the powers of official position;
- (2) Accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the municipality;
- (3) Use municipal time, property, equipment, or other facilities with intent to secure a benefit;
- (4) Take or withhold official action in order to affect a matter in which the municipal officer has a personal or financial interest;
- (5) Attempt to affect a personal or financial interest through coercion of a subordinate; or
- (6) Restrict, or threaten to restrict a contractor's eligibility or opportunity to contract with the city solely in order to secure an unwarranted advantage for the city or the officer.

(c) An assemblymember, school board member, or member of any board or commission may not deliberate or vote on any matter in which he or she has a personal or financial interest.

(d) Violation of this section is a Class B misdemeanor.

(Serial No. 91-04, § 2, 1991)

Charter References: Personal financial interests, § 15.1.

State Law References: Conflict of interest, AS 29.20.010; misuse of official position, AS 39.52.120.

01.45.020 Gifts.

(a) No municipal officer shall, directly, or indirectly, solicit or accept any gift to the officer's benefit, whether in the form of money, service, loan, travel, entertainment, hospitality, promise, or otherwise under circumstances in which it could reasonably be inferred that the gift is intended to influence the officer in the performance of the officer's official duties or constitutes a reward for any official action by the officer.

(b) Travel, even if intended to influence an officer, shall not be regarded as a gift to the officer's benefit if:

- (1) The benefits to the public resulting from the travel clearly outweigh the detriment caused by the

absence of the officer;

- (2) The nature and extent of the transportation and hospitality provided to the officer are economical, businesslike and necessary;
- (3) The officer is not eligible to take personal leave during the travel; and
- (4) The officer submits a pre-travel request and post-travel report for approval by the body of which he or she is a member or, in the case of employees, the City and Borough manager.

(c) Any officer who accepts a gift having a value in excess of \$50.00 shall report such gift to the officer's supervisor if the officer may take or withhold action that affects the giver. The supervisor shall forward a copy of the report to the City and Borough attorney who shall maintain the report in a public file. As used in this section, "gift" includes any series of gifts from the same donor within any 12-month period, other than meals reciprocated by the officer.

(d) Violation of this section is a Class B misdemeanor.

(Serial No. 91-04, § 2, 1991)

State Law References: Alaska Executive Branch Ethics Act, AS 39.52.010 et seq.

01.45.030 Improper use or disclosure of information.

(a) A municipal officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties for the purpose of affecting a personal or financial interest of the officer or the officer's immediate family. This section does not apply to information concerning programs or services available to the public or to municipal employees generally.

(b) Violation of this section is a Class B misdemeanor.

(Serial No. 91-04, § 2, 1991)

01.45.040 Improper influence in municipal grants, contracts, leases, or loans.

(a) A municipal officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a municipal grant, contract, lease, or loan if the municipal officer or any person supervised by the municipal officer may take or withhold official action that affects the award, execution, or administration of the municipal grant, contract, lease, or loan.

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

- (1) Is employed by the agency awarding the grant, contract, or lease, or is employed by the agency for which the grant, contract, or lease is let; or
- (2) Takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

(c) The prohibition in subsection (a) of this section does not apply to a municipal loan held by the

officer or an immediate family member if:

- (1) The municipal officer does not take or withhold official action that affects the award, execution, or administration of the loan;
- (2) The loan is generally available to members of the public; and
- (3) The loan is subject to fixed eligibility standards.

(d) Notwithstanding the provisions of subsection (b)(1) or (c)(1), an assembly member, school board member, or member of any board or commission may have a personal or financial interest in a municipal grant, contract, lease, or loan which is subject to action by the body on which the member serves, provided that the member does not take or attempt to influence official action with respect to the award, execution, or administration of the grant, contract, lease, or loan. As used in this section, "attempt to influence" does not include submission of a written bid or application conforming to standard requirements and available for public inspection and copying prior to award whether or not award is to the member.

(e) A municipal officer shall report in writing to the City and Borough attorney a personal or financial interest held by the officer in a municipal grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves.

(f) Violation of this section is a Class B misdemeanor.
(Serial No. 91-04, § 2, 1991; Serial No. 2001-57, § 2, 2-11-2002)

01.45.050 Improper representation.

(a) A municipal officer may not represent, advise, or assist another person in any matter pending before the agency that the officer serves, if the representation, advice, or assistance is:

- (1) For compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule; or
- (2) Without compensation, but rendered to affect a personal or financial interest of the municipal officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) Violation of this section is a Class B misdemeanor.
(Serial No. 91-04, § 2, 1991)

01.45.060 Outside employment restricted.

(a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves if the outside employment or service is incompatible with the proper discharge of official duties.

(b) A public employee rendering services for compensation or engaging in employment outside the employee's agency shall report prior to commencing such services or employment and by July 1 of each year thereafter the outside services or employment to the City and Borough attorney who shall maintain the report in a public file. The employee shall also report a change in the employee's outside service or employment activity to the City and Borough attorney when it occurs.

(c) Violation of subsection (a) of this section is a Class B misdemeanor. A violation of subsection (b) of this section is an infraction.
(Serial No. 91-04, § 2, 1991)

01.45.070 Restrictions on employment after leaving municipal service.

(a) A municipal officer who leaves municipal service may not, for one year thereafter, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the agency served by the municipal officer and in which the officer participated personally and substantially through the exercise of official action. In this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of ordinances, resolutions and charter amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) Nothing in this section prohibits an agency from contracting with a former municipal officer to act on a matter on behalf of the municipality.

(c) The manager may waive application of subsection (a) of this section upon the following conditions:

(1) The manager shall determine that representation by a former public officer is not:

(A) The result of malfeasance or coercion,

(B) Based in whole or significant part upon knowledge by the officer of facts not available to the public upon demand,

(C) For the purpose of representing, advising, or assisting a person regarding a matter for which the officer was solely or primarily responsible, or

(D) Otherwise adverse to the public interest.

(2) The waiver shall apply only to representation, advice, or assistance to identified persons regarding identified matters and must be in writing.

(3) The waiver must be provided to the City and Borough attorney for approval or disapproval.

(d) Violation of this section is a Class B misdemeanor.
(Serial No. 91-04, § 2, 1991; Serial No. 96-02, § 3, 1996)

01.45.080 Aiding a violation prohibited.

(a) It is a violation of this chapter for a municipal officer to knowingly aid another person in a violation of this chapter.

(b) A violation of this section shall be the same class of offense as the violation aided.
(Serial No. 91-04, § 2, 1991)

ARTICLE II.

DISCLOSURES, DECLARATIONS AND COMPLAINTS

01.45.090 Disclosures of conflicts by municipal employees.

(a) A municipal employee who is involved in a matter that may result or has resulted in a violation of sections 01.45.010--01.45.080 shall:

- (1) Refrain from taking any official action relating to the matter until a determination is made under this section; and
- (2) Immediately disclose the matter in writing to the City and Borough attorney.

(b) Upon receipt of the declaration the attorney shall proceed in accordance with section 01.45.145.
(Serial No. 91-04, § 2, 1991)

Cross References: Departments, CBJ Code ch. 03.10.

01.45.100 Disclosures of conflicts by municipal officers other than employees.

(a) A municipal officer other than an employee, who is involved in a matter that may result in a violation of sections 01.45.010--01.45.080 shall disclose the matter on the public record and ask to be excused from the discussion and official action on that matter. The presiding officer shall determine whether the member's involvement would violate sections 01.45.010--01.45.080. If the presiding officer determines that a violation would exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter. The presiding officer's decision may be overridden by a majority vote of the body.

(b) An assemblymember, school board member, or a member of any board or commission shall, whenever practical, request guidance, which may include a written advisory opinion, from the City and Borough attorney when determining whether a member is involved in a matter that may result in a violation of sections 01.45.010--01.45.080.

(Serial No. 91-04, § 2, 1991)

Cross References: Manager, CBJ Code ch. 03.05; departments, CBJ Code ch. 03.10.

01.45.110 Third party complaints of violations and potential violations.

Any person may file a complaint with the City and Borough attorney, under oath and in writing, of a violation or potential violation of sections 01.45.010--01.45.080 by a municipal officer. The attorney shall provide a copy of the complaint to the municipal officer. Thereafter, the matter shall proceed in accordance with

section 01.45.145 or section 01.45.150.
(Serial No. 91-04, § 2, 1991)

01.45.115 City and borough attorney complaints of violations and potential violations.

The City and Borough attorney may issue a complaint in the same manner as provided in section 01.45.110.
(Serial No. 91-04, § 2, 1991)

01.45.120 City and borough attorney's advisory opinions.

(a) Upon the written request of a municipal officer, a former municipal officer, or an agency, the City and Borough attorney shall issue an advisory opinion interpreting this chapter. The requester shall supply any additional information requested by the City and Borough attorney in order to issue the opinion.

(b) The City and Borough attorney may offer oral advice if delay would cause substantial inconvenience or detriment to the requester. Within two working days after providing the oral advice, the City and Borough attorney shall provide a brief written statement summarizing its contents.

(c) The City and Borough attorney may reconsider, revoke, or modify an advisory opinion at any time.

(d) A request for advice made under subsection (a) of this section is confidential to the extent permitted by law unless the subject of the opinion waives confidentiality and authorizes in writing the release of the request or the full text of the advisory opinion.

(e) The City and Borough attorney shall make the advisory opinion issued under this section available for public inspection with sufficient deletions to prevent disclosure of the persons whose identities are confidential under subsection (d) of this section.
(Serial No. 91-04, § 2, 1991)

01.45.130 Immunity.

A municipal officer or former municipal officer is not liable under this chapter for an action carried out in accordance with the advice of the City and Borough attorney issued under section 01.45.120 if the officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice.
(Serial No. 91-04, § 2, 1991)

ARTICLE III.

ENFORCEMENT PROCEDURES FOR MUNICIPAL EMPLOYEES

01.45.145 Enforcement procedures for municipal employees.

(a) Upon receipt of a disclosure or complaint concerning a municipal employee, the City and Borough attorney shall investigate the matter and shall make a written determination whether the employee's

involvement is likely to violate or has violated sections 01.45.010--01.45.080. A determination shall not be issued more than two years after discovery of the alleged violation, provided that in no event shall a determination be issued more than five years after the alleged violation occurred.

(b) Upon a determination that a violation is likely to occur, the City and Borough attorney shall advise the employee in writing, including a notice that unless the employee accomplishes a reassignment of duties or the divestiture or removal of the personal or financial interests that give rise to the potential violation, the City and Borough attorney shall refer the matter to the employee's supervisor for consideration of discipline pursuant to the personnel rules or collective bargaining agreement. A municipal employee is not liable under this chapter for an action carried out in accordance with a determination made under this subsection (b) if the employee fully disclosed all relevant facts reasonably necessary to the determination; provided, however, that upon reconsideration, revocation or modification of a determination, the employee may be required to accomplish divestiture or removal of the interest giving rise to a violation. An employee may rely on a determination that is currently in effect.

(c) Upon a determination that a violation has occurred, the City and Borough attorney may recommend discipline in accordance with section 01.45.240.

(d) Upon receipt of a determination that a violation is likely to occur or has occurred, a municipal employee may attach to the determination a statement refuting, clarifying, or otherwise distinguishing the charges contained in the determination. The City and Borough attorney shall forward a copy of the determination and the municipal employee's own statement to the personnel director for inclusion in the municipal employee's personnel record.

(e) The City and Borough attorney may reconsider, revoke, or modify a determination at any time and shall immediately notify the employee thereof.

(f) The procedure for appeal of any discipline imposed pursuant to this section shall be as established by personnel rule or collective bargaining agreement, as appropriate.

(g) (1) Before issuance of the City and Borough attorney's determination, information regarding an investigation conducted under this chapter, or obtained by the City and Borough attorney during the investigation, is confidential to the extent permitted by law. The City and Borough attorney shall advise all persons contacted during the course of an investigation that they shall maintain confidentiality regarding the investigation.

(2) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(3) The subject of the investigation may, in writing, waive the confidentiality protection authorized by this section.

(Serial No. 91-04, § 2, 1991)

ARTICLE IV.

ENFORCEMENT PROCEDURES FOR MUNICIPAL OFFICERS OTHER THAN EMPLOYEES

01.45.147 Application of procedures.

The procedures set forth in sections 01.45.150--01.45.210 apply only to municipal officers other than employees, and shall be used in lieu of the procedures set forth in chapter 01.50.
(Serial No. 91-04, § 2, 1991)

01.45.150 Complaints.

(a) A complaint filed under section 01.45.110 regarding the conduct of an assemblymember, a school board member, the City and Borough manager, the superintendent of schools, a board or commission member, or a former municipal officer shall be forwarded to the City and Borough attorney who shall review each complaint to determine whether it contains allegations which, if true, would constitute conduct in violation of this chapter.

(b) In the case of a complaint against the City and Borough attorney, the complaint shall be filed with the mayor, and the assembly shall, and in any other case may, retain independent counsel who shall act in the place of the City and Borough attorney under sections 01.45.150--01.45.250.

(c) If the City and Borough attorney or independent counsel accepts a complaint for investigation, the City and Borough attorney or independent counsel shall serve a copy of the complaint on the subject of the complaint, for a response. The subject shall, within 20 calendar days after service, provide to the City and Borough attorney or independent counsel full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the City and Borough attorney or independent counsel is a violation of this chapter. Failure to answer within the prescribed time or within any additional time period that may be granted in writing by the City and Borough attorney or independent counsel may be considered grounds for a finding of probable cause pursuant to section 01.45.190.

(d) A hearing shall not be initiated more than two years after discovery of the alleged violation, provided that in no event shall a hearing be initiated more than five years after the alleged violation occurred.
(Serial No. 91-04, § 2, 1991)

01.45.160 Dismissal before formal proceedings.

If, after investigation, it appears that further proceedings are not warranted, the City and Borough attorney or independent counsel shall dismiss the matter. The City and Borough attorney or independent counsel shall communicate disposition of the matter promptly to the complainant and to the subject of the complaint.
(Serial No. 91-04, § 2, 1991)

01.45.170 Corrective or preventive action.

After determining that the conduct of the subject of a complaint does not warrant a hearing under section 01.45.200, the City and Borough attorney or independent counsel may recommend action to correct or prevent a violation of this chapter. The City and Borough attorney or independent counsel shall communicate the recommended action to the complainant and the subject of the complaint.
(Serial No. 91-04, § 2, 1991)

01.45.180 Confidentiality.

(a) Before the initiation of formal proceedings under section 01.45.190 or dismissal under section 01.45.160, information regarding an investigation conducted under this chapter, or obtained by the City and Borough attorney or independent counsel during the investigation, is confidential to the extent permitted by law. The City and Borough 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.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection authorized by this section.

(Serial No. 91-04, § 2, 1991)

01.45.190 Probable cause; procedure.

(a) If the City and Borough attorney or independent counsel determines that there is probable cause to believe that a violation of this chapter or a violation that cannot be corrected under section 01.45.170 has occurred, or that the subject of a complaint or declaration made no good faith efforts to comply with a recommendation for corrective or preventive action, the City and Borough attorney or independent counsel shall:

- (1) In the case of an assemblymember, the City and Borough manager, the City and Borough attorney or a member of the personnel board, refer the matter to the assembly for consideration of the issuance of an accusation, appointment of a hearing officer, or both;
- (2) In the case of a school board member, refer the matter to the school board for consideration of the issuance of an accusation, appointment of a hearing officer, or both; or
- (3) In other cases may initiate formal proceedings before the personnel board under this chapter by filing an accusation with the personnel board.

(b) An accusation issued under subsection (a) of this section shall specifically set out the alleged violation. The City and Borough attorney or independent counsel shall serve a copy of the accusation upon the subject of the accusation. After service, the accusation shall be a public document open to inspection.

(c) The person who is the subject of the accusation shall file an answer with the City and Borough attorney or independent counsel within 20 calendar days after service of the accusation or at a later time specified by the City and Borough attorney or independent counsel. If the subject of the accusation fails to timely answer, the allegations shall be considered admitted.

(d) If the subject of the accusation denies that a violation of this chapter has occurred, the hearing officer or hearing agency having jurisdiction shall schedule a hearing.

(e) If the accusation is admitted or considered admitted, the hearing agency shall consider the imposition of penalties.
(Serial No. 91-04, § 2, 1991)

01.45.200 Hearings.

(a) The hearing officer or hearing agency shall convene a pre-hearing conference to set a time and place for the hearing, provide for stipulations, establish procedures and schedules, and resolve such other issues as may aid in disposition of the question before it.

(b) The hearing officer or hearing agency may administer oaths, hold hearings and take testimony. Upon application by a party to the hearing, the board may issue subpoenas to summon witnesses and require the production of records, books, papers and other evidence.

(c) At the hearing, the City and Borough attorney or independent counsel shall present the charges. The City and Borough attorney or independent counsel shall have the burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated this chapter.

(d) The parties to the hearing are the municipality and the subject of the accusation. The subject of an accusation may select a representative of such subject's own choosing. The representative need not be an attorney. Each party shall be provided an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

(e) Technical rules of evidence do not apply, but the hearing officer and hearing agency findings must be based upon reliable and relevant evidence. Hearsay may be admitted if supported by direct evidence. The hearing shall be electronically recorded and all physical and documentary evidence maintained. Copies of transcripts of the hearing record shall be available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing shall be furnished at no cost to the subject of the accusation.

(f) At the conclusion of the hearing, one party or both parties may be ordered to draft findings of fact and conclusions of law. After receipt of any such draft findings, the hearing officer or hearing agency shall issue proposed findings of fact and conclusions of law. The parties shall be afforded a reasonable opportunity to comment upon the proposed findings and conclusions. After consideration of the proposed findings and conclusions and any comments, the hearing agency shall issue the final findings of fact and conclusions of law.

(g) The findings of fact and conclusions of law adopted by the hearing agency and the recordings of all public proceedings shall be available to the public.
(Serial No. 91-04, § 2, 1991)

01.45.210 Agency action.

If the hearing agency finds that the accusation is not supported by a preponderance of the evidence, it shall issue an order to the parties dismissing the accusation. If it finds that the accusation is supported by a preponderance of the evidence it shall consider imposition of penalties, remedies, or both.
(Serial No. 91-04, § 2, 1991)

ARTICLE V.

PENALTIES AND REMEDIES

01.45.240 Violations penalties for misconduct.

(a) If the City and Borough attorney determines pursuant to section 01.45.145 that a public employee has violated this chapter, the City and Borough attorney may recommend to the employee's supervisor that the supervisor:

- (1) Order the employee to stop engaging in any official action related to the violation;
- (2) Take disciplinary action, including dismissal; and
- (3) Condition discipline based on remedial action, including the return or other disposition of any improperly received gift or other benefit.

(b) If a hearing agency determines pursuant to section 01.45.190 or section 01.45.200 that a municipal officer other than an employee has violated this chapter, it:

- (1) Shall order the member to refrain from voting, deliberating, or participating in the matter;
- (2) May publicly censure the member; and
- (3) May condition discipline based on remedial action, including the return or other disposition of any improperly received gift or other benefit.

(c) If the personnel board determines that a former municipal officer has violated this chapter, it shall:

- (1) Issue a public statement of its findings, conclusions, and recommendations; and
- (2) Request the City and Borough attorney or independent counsel to exercise all legal and equitable remedies available to the municipality to seek appropriate relief.

(Serial No. 91-04, § 2, 1991)

01.45.250 Actions voidable.

(a) In addition to any other penalty provided by law, a municipal grant, contract, or lease entered into in violation of this chapter is voidable by the municipality. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The City and Borough attorney or independent counsel shall give notice of intent to void a municipal grant, contract, or lease under this section no later than 30 days after the hearing agency's determination of a violation under this chapter.

(b) In addition to any other penalty provided for by law, the municipality may require a municipal loan received in violation of this chapter to become immediately payable.

(c) Any municipal action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The City and Borough attorney or independent counsel may pursue any other available legal and equitable remedies.

(d) The City and Borough attorney or independent counsel may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former municipal officer. Action to recover under this subsection must be brought within two years after discovery of the violation, or five years after the violation occurred, whichever is sooner.

(Serial No. 91-04, § 2, 1991)

01.45.260 Criminal sanctions additional.

To the extent that violations under this chapter are punishable in a criminal action, the criminal penalty is in addition to the civil remedies set out in this chapter.

(Serial No. 91-04, § 2, 1991)

ARTICLE VI.

GENERAL PROVISIONS

01.45.300 Applicability.

(a) Except as specifically provided, this chapter applies to all municipal officers. This chapter does not apply to a former municipal officer unless a provision specifically states that it so applies.

(b) The provisions of this chapter supersede the common law on conflicts of interest that may apply to a municipal officer and any less stringent personnel rules relating to conflicts of interest. However, nothing in this chapter precludes a prosecution under an applicable criminal statute or ordinance or prevents enforcement of another state or municipal law that imposes a stricter standard of ethical conduct on municipal officers.

(c) The standards of conduct established by this chapter are not subject to negotiation by collective bargaining under chapter 44.10, however, the appeal of disciplinary actions imposed for violations of this chapter may be according to procedures established by a collective bargaining agreement.

(Serial No. 91-04, § 2, 1991)

01.45.320 Cooperation.

All agencies and instrumentalities of the municipality shall cooperate fully with the City and Borough attorney and the hearing agency in the performance of their duties under this chapter.

(Serial No. 91-04, § 2, 1991)

01.45.330 Construction.

This chapter shall be construed to promote high standards of ethical conduct in municipal government.
(Serial No. 91-04, § 2, 1991)

01.45.340 Regulations.

The City and Borough attorney may adopt regulations under chapter 01.60 to interpret and implement this chapter.
(Serial No. 91-04, § 2, 1991; Serial No. 96-41, § 3, 1996)

01.45.350 Culpability.

When the culpability sufficient to establish a material element of an offense is not prescribed by this chapter, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.
(Serial No. 91-04, § 2, 1991)

01.45.360 Definitions.

The following words, terms and phrases when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agency means the assembly, a department, the City and Borough manager's office, or other entity in or of the government of the City and Borough including the school district, ski area, hospital, harbors, and all boards and commissions.

Benefit means anything that is to a person's financial or personal interest.

Board or commission means a board, commission, committee, council, task force, or other body or subcommittee thereof, created by Charter or initiative, or by the assembly, the mayor, or the City and Borough manager.

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 not for profit.

Child means a biological child, an adopted child, a stepchild, or a dependent child.

Compensation means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another.

Financial interest means any interest, other than securities traded on a national exchange, held by a municipal officer or an immediate family member, including involvement or ownership of an interest in a business, property, or a professional or private relationship, from which the person has received or expects to receive compensation.

Gain means actual or anticipated gain, benefit, profit, or compensation.

Hearing agency means the assembly, school board, or personnel board when conducting hearings under

the authority of this chapter.

Immediate family member means a municipal officer's spouse, minor children and dependents, or a regular member of the officer's household.

Infraction shall carry the penalties established by section 01.40.010(c).

Municipal means the City and Borough of Juneau.

Municipal officer and *officer* mean:

- (1) An assemblymember or assemblymember-elect;
- (2) A member or member-elect of the school board;
- (3) A member or member-designate of a board or commission;
- (4) A person employed by a board or commission;
- (5) A public employee.

Municipal officer other than an employee means:

- (1) An assemblymember or assemblymember-elect;
- (2) A member or member-elect of the school board;
- (3) A member or member-designate of a board or commission;
- (4) A person employed by a board or commission;
- (5) The City and Borough manager;
- (6) The City and Borough attorney.

Official action means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a municipal officer.

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

Parent includes a biological parent, an adoptive parent, or a stepparent of the municipal officer.

Person includes a natural person, a business, or an organization.

Personal interest means an interest other than a financial interest, and includes any material advantage

in the form of a promise, service, privilege, exemption, patronage, or advancement. A municipal officer shall be deemed to have a personal interest in the affairs of any person, other than any not for profit organization, if the officer owes a fiduciary duty to that person.

Personnel board and *board* mean the personnel board established in City and Borough of Juneau Charter, Section 3.14.

Public employee and *employee* mean a permanent, probationary, seasonal, temporary, or provisional, employee of an agency.

(Serial No. 91-04, § 2, 1991)

Cross References: Definitions generally, CBJ Code § 01.15.010.