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Agenda

- 1) **Call To Order** – 6:30 PM
- 2) **Disclosure of Conflicts of Interest**
- 3) **Approval of the Agenda**
- 4) **Meeting Minutes Approval**
July 17, 2023, Regular Meeting Minutes
- 5) **Review Status of Pending Complaints**
 - a) Review Final Draft Notice of Dismissal EB2023-01
 - b) Other complaints
- 6) **Public Comment** (Please limit comments to items other than those under consideration and under 2 minutes. Board members may elect to refrain from responding.)
- 7) **Training Sub-Committee**
 - a) Update on Training
- 8) **New Business**
 - a) Status Update of New Ethics Board Members
- 9) **Agenda Items for Next Meeting**
- 10) **Next Meeting Date:** Monday, September 18, 2023
- 11) **Adjournment**

COBI ETHICS BOARD

Regular Meeting

Monday, July 17, 2023

6:30 PM – 6:46 PM

In-person and Via Zoom

Minutes

1. Call to Order - Meeting was called to order at 6:30 pm. Present were: Jim Cash (Chair), Rafael Escandon (Deputy Chair), Donna Davison, Rosemary Hollinger, Doña Keating and Ben Woodruff, Andrew Tsoming (Counsel) and Peggy Nimb (City Staff). Absent: David Mallon
2. Disclosures of Conflict of Interest – None.
3. Approval of the 07/17/2023 Meeting Agenda – D. Davison called a motion to approve the agenda; R. Escandon seconded and the motion to approve the meeting agenda passed unanimously.
4. Motion of acceptance of 06/16/2023 meeting minutes made by D. Keating, seconded by D. Davison and approved unanimously.
- 5 (a) Nomination of Rafael Escandon (current Deputy Chair) to serve a term as Ethics Board Chair made by R. Hollinger and seconded by D. Davison. Vote to approve called and passed unanimously with one abstention (Rafael Escandon).
- 5 (b) Nomination by B. Woodruff and second by D. Davison to appoint Rosemary Hollinger to a term as Deputy Chair. Vote to approve was unanimous.
6. Status of Pending Complaints: a) No changes in status of prior complaints that are pending litigation. b) Complaint EB 2023 01: Notice of Dismissal under revision, revised version will be distributed to Andrew Tsoming for his legal review prior to next EB meeting (8/21/2023)
8. Public Comment – No public comments received.
9. Recruitment and confirmation of new EB members to replace those members who have completed their terms. At this time, BI City Council reported that they would prefer to review more than two candidates for the two (opening) positions. The EB awaits further news from BI City Council on applicants, interviews and confirmations.
10. Training Sub-Committee
 1. Recording of training video completed - viewing encouraged.

11. New Business - None

12. Agenda for next Meeting –

1. Status of revised Letter of Dismissal EB 2023-01
2. Training Update (as necessary)
3. Status of new Ethics Board applicants, expiring terms and chair/deputy assignments

10. Next Meeting Date: August 21, 2023, 6:30 pm

Adjournment at 6:46 p.m.

DRAFT

August 7, 2023

DETERMINATION LETTER: EB 2023-01

Complaint Submitted to City Clerk: January 20, 2023

Response Received: February 15, 2023

Initial Consideration by Ethics Board: March 20, 2023

Final Consideration by Ethics Board: April 17, 2023

DETERMINATION: Dismissed

I. BRIEF Summary of Complaint

This Complaint alleges a violation of Article II, § F (**Conflict of Interest – Members of City Committees or Commissions and Employment**) of the City of Bainbridge Island Code of Conduct and Ethics Program, effective May 10, 2022 (“Ethics Program”).

This Complaint includes reference to material previously submitted to the Ethics Board (“EB”) on October 20, 2022 by City Manager Blair King in an effort to obtain the EB’s advisory opinion. The EB declined to offer an advisory opinion to the City Manager on this matter at the time.

This Complaint references Article II, Section F of the Ethics Program; which relates to members of City Committees or Commissions and Employment. Article II, Section F (**Conflict of Interest – Members of City Committees or Commissions and Employment**) of the Bainbridge Island Ethics Program states the following:

While serving on a City Committee or Commission, and for two (2) years after leaving such position, no member of a City Committee or Commission shall obtain employment in which they will take direct or indirect advantage of matters which they, as a member of a City Committee or Commission, recommended to the City Council. This includes applying for positions or contracts with the City when the City Committee or Commission on which the member served recommended funding such position or contract.

Reference is made in the Complaint that the City of Bainbridge Island entered into a contract with a vendor prematurely (i.e., prior to completion of the mandated two (2) year waiting period of a former Climate Change Advisory Committee (“CACC”) member (redacted), who is a principal at the contracted vendor). Specifically, the Complaint alleges that insufficient time elapsed between the 4/28/2022— resignation of (redacted), a former member of the CACC— and the 09/21/22 execution of a contract between the City and a vendor at which the former

CACC member was employed. The elapsed period, therefore, was five (5) months, versus the two (2) years required by Article II Section F of the Code of Ethics (referenced below). It is in this context that the Complainant claims a violation of the Article II Section F occurred.

II. Summary of Response to the Complainant

A summary of the Response to the Complaint by the former CACC member (redacted) is summarized below for the purposes of brevity:

1) (The former CACC member) **did not apply for** the September 2022 (training) contract. Thus, the complaint fails to identify a violation of (Article II) Section F.

2) The CACC cannot enter into contracts or make funding decisions. Thus, the former committee member had **no ability to “recommend funding”** or direct a contract to the vendor (redacted). The City made that (training contracting) decision independently.

Point 3 in the response to the complaint (below) relates to a different aspect of the Complaint, with the Complainant alleging the possibility that the CACC member held influence and/or decision-making authority in the City’s decision to use an assessment tool developed by the CACC member’s company. This facet of the Complaint is not directly related to the 2 year period referenced in Article II Section F of the Ethics Program.

3) Even if adoption of the free Certification Tool somehow “influenced” later decisions to contract with (vendor) for training, those were decisions made by the City. The City could have engaged other organizations. (Former CACC member) reasonably assumed that the City would not propose a contract to (vendor) in violation of its Code of Ethics. If it did, that is an internal City matter that does not support a complaint against (former CACC member).

4) Any alleged violation of the Code of Ethics has been cured by (former CACC member’s) resignation from the CACC.

III. Compliance with Article. III, § B.8

Article III, Section B.8 of the City of Bainbridge Island Code of Conduct and Ethics Program states: “The Ethics Board shall strive to complete its review within 45 business days from the date that the City Clerk forwarded the complaint to the Ethics Board. If review takes longer than 45 business days, the Ethics Board in its determination shall specify the reasons why additional time was needed.”

The first draft of this Determination Letter was circulated to the EB on April 17, 2023; approximately 53 business days after the Complaint was received by the City Clerk (Jan 30, 2023). Additional time was needed to review this case and issue this Determination Letter because:

- 1) The EB could not have considered the Complaint within 45 days given the importance of the Response to the Complaint submitted February 15, 2023,
- 2) Because of the EB's regular (monthly) meeting schedule.

IV. Analysis of Complaint

The EB has reviewed the Complaint, the former CACC members' Response, and all accompanying materials which include the prior request by the City Manager for review and advisory opinion on this matter.

After careful consideration of these materials and deliberation, we have determined that, while the Complaint includes some elements that the Ethics Board takes under consideration for potential future adjustment/specification in the Code of Conduct and Ethics Program, the dismissal of the Complaint is appropriate for the following reasons:

Article II, Subsection F (Conflicts of Interest – Members of City Committees or Commissions and Employment) states (relevant sections included in ***bold italics***):

While serving on a City Committee or Commission, and for two (2) years after leaving such position, no member of a City Committee or Commission ***shall obtain employment*** in which they will take direct or indirect advantage of matters which they, as a member of a City Committee or Commission, recommend to the City Council. ***This includes applying for positions or contracts with the City*** when the City Committee or Commission on which the member served recommended funding such a position or contract.

The information presented to the EB in the Complaint and Response show that the individual member of the CACC's employment with the non-profit entity, with which the City of Bainbridge Island ultimately entered into a training contract, ***predated their service on the CACC***, and therefore the individual did not, by the letter of Article II, Sub-Section F, ***"obtain employment"*** in which they would take direct or indirect advantage.....The Ethics Board assumes that at the time of appointment to the CACC, the CACC member properly disclosed the identity of their employer.

Article III, Section B.7.d of the Ethics Program states: *If the Ethics Board, after review of the complaint and any response, determines that the facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics (Article II), then the Ethics Board shall dismiss the complaint and, after legal review, provide a notice of dismissal, to include a brief statement regarding the basis for the dismissal, to the City Clerk. The City Clerk shall provide the notice of dismissal to the complainant and respondent.*

Consequently, we have determined that the Complaint should be dismissed on the basis that because the facts stated in the complaint, even if true, would not constitute a material violation of Article II, Section F of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics.

V. Determination

The Ethics Board dismisses the Complaint, pursuant to Article III, Section B.7.d of the Ethics Program.

VI. Further Recommendations

During the consideration of this complaint, EB members expressed a desire to provide points of guidance and education that may ultimately assist in the prevention and/or avoidance of future similar circumstances developing and ultimately being referred to the EB for review. The EB appreciates and recognizes that the public service individual citizens provide through voluntary participation on boards and advisory panels enriches our community. Accepting such appointments to City advisory boards and other qualifying positions includes an individual (fiduciary) responsibility incumbent upon each member to familiarize themselves with, and abide by, the BI Ethics Program.

Likewise, there is a responsibility to provide training, to have reference materials easily accessible on the appropriate website, and to have the option of EB members being available for advice and consultation, particularly on the spirit of the Ethics Program, or to assist in clarifying ambiguities within it. As such, an increase in awareness and availability of channels for advice may prevent (good faith) situations from escalating to, and/or abrogate the need for engagement of the complaint process and its resulting actions. As situational experiences accrue, the need to amend the Ethics Program may arise, at which time such recommendations for revision would be summarized by the EB and brought to the BI City Council for consideration.

The EB believes that several opportunities to mitigate this specific Complaint (EB 2023-01) were potentially missed as events in the case transpired. The EB acknowledges however that retrospective analyses suffer from the benefits of hindsight. Nonetheless, in this case, the following possibilities may have avoided what culminated in this complaint:

1. Forward-thinking, recognition, and open discussion by board members if activities (e.g. tools, training, services) under discussion had the potential to create the appearance of a conflict of interest of a member or members
2. The above is predicated on greater familiarity with/sensitivity to the Ethics/conflict of interest policy especially when potential COBI contracts may be awarded to vendors with which board members may have disclose(able) interests

3. Therefore, advice that a threshold of (even) the appearance of a conflict might have triggered more specific communication on the potential conflict and its ramifications on the committee/board activities earlier
4. Deliberate actions, such as disclosure/recusal/a request for a review or adjustment of the ethics policy, might have been taken earlier in this chain of events and decisions. Doing so may have avoided the appearance of/or prospectively mitigated the events which led to the complaint.
5. Adjustment to language in Article II, Sub-Section F of the Ethics Program should be considered to allow more guidance and clear(er), more specific remedies to cure potential conflicts of interest before they escalate to the level of complaints.

The EB views it as its role to weigh the complaints reviewed and outcomes reached against both the verbatim and the interpreted higher-level spirit of the Ethics Program. If functioning properly, each case adds wisdom to the process, either solidifying or leading to the EB making recommendations to BI city council for clarification or adjustment to the entire or components of the Ethics Program.

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