



CITY OF
BAINBRIDGE ISLAND

Office of the City Attorney
City Attorney Statement

Date: April 17, 2019
To: General Public
From: Joe Levan, City Attorney
Re: Ethics Board Advisory Opinion # 2018-06 (Issued 4/15/19)

I am issuing this City Attorney Statement to avoid any misunderstanding that could occur due to an Advisory Opinion issued by the City of Bainbridge Island Ethics Board. The Advisory Opinion at issue, [Advisory Opinion # 2018-06](#) (“AO 2018-06”), is dated 4/15/19 and was provided by the Ethics Board to the City Clerk on 4/16/19.

AO 2018-06 relates to a request for an Advisory Opinion that was made by Bainbridge Councilmember Rasham Nassar. The specific request is set forth in an [email](#) that Councilmember Nassar sent to the Ethics Board. In sum, the request relates to whether Councilmember Nassar’s participation in City Council consideration of land use regulations would constitute a conflict of interest in the context of her ownership of real property on the island which contains critical areas and wetland buffers, and where she participated in Council discussions and voted on land use regulations that would apply to her property, as well as to many other properties.

This City Attorney Statement is necessitated by incorrect legal conclusions reached in AO 2018-06, as well as a factual description that is incomplete and may be misleading.

Regarding the incorrect legal conclusions, AO 2018-06 reaches specific conclusions that are contrary to state law related to what is permissible for Councilmembers, and are contrary to legal advice that the City Attorney has provided to Councilmembers (including Councilmember Nassar). In addition, AO 2018-06 describes general principles but it does not specify a requirement in the City’s Ethics Program that has been violated by Councilmember Nassar’s actions.

In relevant part, AO 2018-06 broadly concludes that “... the City Councilmember should have **recused herself from voting** on matters of land use and zoning.” (Emphasis in original.) AO 2018-06 refers to “appearance of fairness” as a basis for reaching this conclusion.

Presumably, the reference to “appearance of fairness” is in reference to the appearance of fairness doctrine, which is based on Washington state law. However, AO 2018-06 does not recognize that the appearance of fairness doctrine does not require Councilmembers to recuse themselves from voting on the type of land use regulations at issue in AO 2018-06 because those regulations are regarded as area-wide regulations and the act of voting on them by Councilmembers is legislative in nature. In contrast, the appearance of fairness doctrine applies to a different type of activity, referred to as “quasi-judicial” matters. See, e.g., Chapter 42.36 RCW. Contrary to what is indicated in AO 2018-06, state law appearance of fairness requirements did not, and do not, require Councilmember Nassar to recuse herself from voting on the land use regulations at issue.

An additional incorrect legal conclusion is the statement that the “**ability to discuss** these land use and zoning decisions would then have been determined after discussion and decision by the remaining members of the City Council.” (Emphasis in original.) Regarding such legislative matters to which the appearance of fairness doctrine does not apply, Councilmembers do not have the authority, as implied by AO 2018-06, to exclude another Councilmember from participating in such legislative matters.

Regarding the potentially misleading portion of the factual description, AO 2018-06 states, in relevant part, that AO 2018-06 “was deferred until the City Code Enforcement determination was issued,” As a factual matter, the City’s code enforcement action related to Councilmember Nassar’s property is an ongoing matter for which the City is in the process of determining the extent of any violations and is working with the property owners to achieve compliance, consistent with the City’s code enforcement process more generally. At this point, a final determination has not been reached related to what will constitute full compliance.