

Duplicate Numbered Resolution (Copy 1)

CITY OF GUSTAVUS, ALASKA ORDINANCE 2008-27

AN ORDINANCE FOR THE CITY OF GUSTAVUS AMENDING TITLE 2 ADMINISTRATION SECTION, 2.20.090 CONFLICT OF INTEREST AND ADDING SECTIONS 2.20.091, 2.20.092, 2.20.093, 2.20.094, 2.20.095, 2.20.096, 2.20.097, 2.20.098, AND 2.20.099.

BE IT ENACTED BY THE GUSTAVUS CITY COUNCIL AS FOLLOWS:

Section 1. Classification This ordinance is of general and permanent nature and shall become a part of the City of Gustavus Municipal Cods.

Section 2. Severability If any provisions of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and its application to other persons, or circumstances shall not be affected thereby.

Section 3. Enactment Now therefore, be it enacted by the Gustavus City Council that Section 2.20.090 be amended as follows and that 2.20.091, 2.20.092, 2.20.093, 2.20.094, 2.20.095, 2.20.096, 2.20.097, 2.20.098, 2.20.099 be added. Bolded items are additions, strikethroughs are deletions.

Conflict of Interest

Chapters:

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Section 02.20.090 Conflict of Interest Purpose

~~A Council member, the Mayor, or other officer or employee of the City shall ask to be excused from participating in any official action in which he or she has a substantial financial interest as specified in Alaska Code Alaska Statute 29.20.010.~~

The purpose of this chapter is to set reasonable standards of conduct for elected and appointed public officials and for city employees, so that the public may be assured that its trust in such persons is well-placed and that the elected officials, volunteers and employees themselves are aware of the high standards of conduct demanded of persons in like office and position.

Section 02.20.091 Definitions

a. **Definitions. As used in this chapter, the following words have the following meanings:**

1. **City. The City of Gustavus, its council, employees, administration, committee chairpersons and committee members and boards.**

2. **City Employee. Any person employed by the City, whether full-time or part-time, temporarily or permanently. The City Clerk is a city employee.**

3. **City Official. A person who holds elected office under the ordinance of the City, who is appointed to fill a vacancy in an elective office, is appointed by the City as an employee, such as the City Clerk, or who is a member of a City board or committee whose appointment is subject to confirmation by the City Council. A person can be both a city employee, and a City official.**

4. **Contractors are any business, individual, corporation, sole proprietorship, or any other entity with who the City establishes contracts for purposes of executing City business.**

5. **Confidential Information. Any information exempt from disclosure under Section of City of Gustavus code.**

6. **Engaging in business. Submitting a written or oral proposal to supply goods, services or other things of value, or furnish goods, services or other things of value, for consideration.**

7. **Substantial Financial Interest. An expectation of receiving a pecuniary benefit. A financial interest of a person includes any financial interest of a member of that person's immediate family. A person has a financial interest in an organization in which that person has an ownership interest or is a director, officer or an employee. A person has a financial interest in a decision if a financial interest of that person will vary with the**

outcome of the decision. A substantial financial interest does not include the following: A personal or financial interest which is not of the magnitude that would exert an influence on an average, reasonable person; a personal or financial interest of a type which is generally possessed by the public or a large class of persons to which that official or employee belongs; or an action or influence which would have an insignificant or conjectural effect on the matter in question.

8. **Gratuity.** A thing having value given voluntarily or beyond lawful obligation in return for, or in anticipation of, any service or consideration in connection with the official's performance of duties.

9. **Immediate Family.** A person's relation to another by blood to the second degree of kinship, marriage or adoption or who lives in that person's household.

10. **Organization.** Any corporation, partnership, sole proprietorship, firm or association, whether organized for profit or nonprofit.

b. **Construction.** This chapter shall be liberally construed to protect the public interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for city officials and employees.

02.20.092 City Official and Employee Responsibilities

a. A city official or employee may not participate in any official action on a City contract or financial appropriation, except for the circumstances listed below, in which he/she or a member of his/her family, household, business, colleague or associate, has a substantial financial interest.

b. A City employee who is also a City official may participate fully in any action before the city council, board or committee pertaining to basic city operations, including the department for which that employee works, or which oversees the employees position, provided;

1. The employee first declares their position with the City; and

2. The action does not involve a substantial increase or decrease in any operating budget, salary or hourly wage that is outside the normal and established operational budgets, procedures or parameters set by the City if the action is for the department for in which the city official is employed.

c. A City official may not participate in formulation of, or discussion about any plan, contract or financial action before the City in which that City official might ultimately derive substantial

financial benefit given the nature of that City official's profession or business interests, without first declaring the conflict to the City Council, board or committee directly responsible for that plan, contract or financial action.

d. No City official or employee, nor any entity in which he or she may have a substantial financial interest, may contract with the city to provide supplies, services or professional services except:

1. Prior to executing the contract or award, a notice of intent to do business with the City is provided in a written disclosure statement submitted to the City Clerk and to the City board or committee with whom the City official intends to do business. It is the responsibility of both the City Clerk and the committee or board presiding officer to advise the City Council of this stated intent; and

2. The City official neither participated in the decision to award the contract nor attempts to influence such decision; and

3. The City board or committee charged with responsibility for award of any contract or financial action has fully and properly addressed this issue at the board or committee level under terms outlined in this section, and has referred this matter to the City Council for final determination. Only the City Council can make a final determination as to the existence of conflict of interest, and the contract or financial transaction can be awarded only when the City Council has determined that the City official can accept the contract or financial transaction without conflict of interest, or unduly eroding the public trust, or under whatever terms the City Council determines are most appropriate.

4. Performance of the contract is compatible with the ability of the City official or employee to discharge his or her official duties and to exercise his or her independent judgment.

e. Newly elected or appointed members of the City Council, boards or committees who have prior contracts with the City, or are affiliated with entities or organizations which may have a substantial financial interest with the City, may fulfill the terms and conditions of such contracts without penalty.

f. Use of Office for Personal Gain. No person shall seek or hold office for the purpose of obtaining anything of value for himself/herself, his/her family, or a business that he/she owns or in which he/she holds an interest, and to avoid any such appearance, the pre-existing conditions described herein should be declared at a public meeting at the earliest opportunity after taking office.

g. Representing Private Interests. No elected official shall formally represent private business or personal interests before the council, or other City boards or committees.

h. The mayor and council members may serve on non-city boards, commissions, committees or on the boards of non-profit organizations only as ex-officio (non-voting) members if the board, commission, committee or nonprofit organization has received or will request funding from the city.

i. Nothing herein shall prevent a member of the council or a board or committee from making verbal or written inquiries on behalf of constituents or the general public to elements of City government, or from representing explanations or additional information on behalf of such constituents. No elected official may solicit a benefit or anything of value or accept same from any person for having performed this service other than permitted in subsection 02.20.093.f of this section.

02.20.093 Prohibited Acts - City Officials and Employees.

No city official or employee may engage intentionally in conduct that conflicts with that officer's or employee's official duties, including but not limited to conduct violating the following standards:

a. Engage in business with the city (including but not limited to submitting a written or oral bid or proposal), before all issues that might be perceived as conflict of interest have been fully and properly addressed by the boards or committees with responsibility for developing plans, contracts or financial actions, or the City Council, as provided in subsection 02.20.092.b, c and d above.

b. Acquire a financial interest in any organization with whom the city currently does business without disclosing that acquisition. Such disclosure shall be the same method as for a contract under subsection 02.20.092.d above.

c. No city official or employee may reject, ignore or defy the decision of the presiding officer of the city council on matters of conflict of interest. Only the City Council may overturn the decision of the presiding officer by majority vote of the council, per Section 2.40.090(d) of Gustavus municipal code. Lacking an overturn by the City Council, the ruling of the presiding officer is the ruling of the council. Any action by a City official to reject, ignore or defy the decision of the city council on matters of conflict of interest is grounds to disqualify that city official for consideration for awarding of the contract or financial award, and is grounds for removal from office (Section 2.60.010).

d. No city official or employee may disclose confidential information held by the city unless authorized or required by law to do so, or use that information to advance the official's or employee's financial interest or the financial interest of others.

e. A city official or employee may not engage in business or accept employment with, or render services for, a person other than the City where the activity will conflict with the official's or employee's duties to the City or impair the official's or employee's independence of judgment in performing those duties.

f. No City official or employee may accept a gratuity from any person engaging in business with the city or having a financial interest in a decision pending with the city. Any City official who receives a gratuity shall report the receipt to the committee chair or the employee's supervisor, who shall report the receipt to the City attorney. This subsection does not prohibit accepting:

1. A meal offered as a courtesy
2. Discounts or prizes which are generally available to the public or to a large business category to which the official or employee belongs;
3. Gifts presented by the employing agency in recognition of meritorious service to the city or other civic or public awards of whatever nature; or
4. Campaign contributions as candidate for public office.

2.20.094 Contract Inducements

No payment, gratuity or offer of employment shall be made to City officials or employees in connection with any contract, by or on behalf of the subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order.

2.20.095 Post-Public Service Restrictions and Conditions

a. No former City official or employee shall, for a period of six months after the termination of the term of office or employment, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the City and in which the official or employee participated personally and substantially through the exercise of official action.

b. No former elected or appointed City official may be employed by the City in a new position that was created during the period of service of that City official, and in which that City official participated in the creation thereof, for a period of six months after leaving office.

c. The council may, by majority vote as specified in Section 2.40.090, authorize a waiver from the requirements of subsections 2.20.095 (a) and (b) of this section.

d. Any city official who was employed by the City prior to beginning a period of public service, or was employed by the City during the period of public service, can continue as an employee of the City following their period of public service, without restrictions or interruption of employment.

e. For purposes of this section, voting on an appropriation as a City official to fund City operations in the future shall not in and of itself constitute substantial participation in a matter that would automatically disqualify a City employee from continuing in as a City employee when they leave public service, provided:

1. The City operation being funded is an annual appropriation for an established program; and
2. The City employee will not benefit directly from an appropriation that is over and above the established operational budget, adjusted for inflation or reasonable increase, established during the preceding fiscal year.

f. This section does not prohibit the City from contracting with a former official or employee to act on a matter on behalf of the city.

g. When a former City official or employee conducts business or intends to conduct business with the City, the former official or employee shall file an affidavit with the City Clerk stating:

1. The name and office of the City official or employee, and the position they previously held with the City; and
2. The name of any organization in which the official or employee has a financial interest, whose activities are the subject of the disclosure, and a description of that financial interest; and
3. A description of the transaction that is the subject of the disclosure.

2.01.096 Sanctions and Violations

a. Any City official found by the City Council to have violated any of the provisions of this chapter shall be subject to appropriate sanctions. The mayor may nominate a special committee, to be ratified by the City Council according to terms in 2.40.150(d)(2), to review the allegations and provide recommendations.

b. Sanctions for any current and former City officials or employees found to have violated any of the provisions of this

chapter can consist of dismissal from office, or sacrifice of a contract or financial award, but shall not be legal in nature.

c. Sanctions for City employees found by to have violated any of the provisions of this chapter, or to have furnished false or misleading information shall be subject to employment sanctions up to and including discharge, as determined by the council.

2.20.097 Invalid actions

a. Any contract negotiated, entered into, or performed in violation of any of the provisions of this chapter shall be voidable as to the City, but only by action of the council.

b. Any permit, license, ruling, determination, or other official action of an agency applied for, or in any other manner sought, obtained or undertaken where the beneficiary knew or should have known of a violation of any of the provisions of this chapter may be invalidated by the council, if applicable.

2.20.098 Other Remedies

Nothing in this chapter shall preclude the City from maintaining an action to achieve an accounting for any pecuniary benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

2.20.099 Relationship to Other Laws

a. The procedures and disciplines provided by this chapter are supplemental and do not limit the power of any agency to otherwise discipline officials or employees or to take appropriate administrative action to adopt more restrictive rules. This chapter is intended to replace the common law regarding conflicts of interest with respect to City elected and appointed officials and employees. Other than superseding the common law, nothing in this chapter is intended to repeal or is to be construed as repealing in any way the provisions of any other law or ordinance.

b. The invalidity of any section, subsection, provision, clause or portion of this chapter or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

Section 4. Effective Date This ordinance becomes effective upon adoption by the Gustavus City Council.

