CITY OF BAINBRIDGE ISLAND

ETHICS BOARD
REGULAR MEETING
MONDAY, NOVEMBER 16, 2020
6:30 PM
VIA ZOOM WEBINAR

THE ETHICS BOARD WILL HOLD THIS MEETING USING A VIRTUAL, ZOOM WEBINAR, PER GOVERNOR INSLEE'S "STAY HOME, STAY HEALTHY" ORDERS

MEMBERS OF THE PUBLIC WILL BE ABLE TO CALL IN TO THE ZOOM MEETING

PLEASE CLICK THE LINK BELOW TO JOIN THE WEBINAR:
HTTPS://BAINBRIDGEWA.ZOOM.US/J/94452615822
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DIAL(FOR HIGHER QUALITY, DIAL A NUMBER BASED ON YOUR CURRENT LOCATION):
US: +1 253 215 8782 OR +1 346 248 7799 OR +1 669 900 9128 OR +1 301 715 8592 OR +1 312 626 6799 OR +1 646 558 8656

AGENDA

1. CALL TO ORDER – 6:30 PM
2. DISCLOSURES OF CONFLICTS OF INTEREST
3. ACCEPTANCE OF MEETING MINUTES – OCTOBER 19, 2020
4. PUBLIC COMMENT
5. CONSIDERATION OF DRAFT REVISIONS TO OPERATING RULES
6. REVIEW DETERMINATION LETTER EB-2020-02 (ARTICLE II COMPLAINT)
7. INITIAL CONSIDERATION OF EB-2020-03 (ARTICLE II COMPLAINT)
8. UPDATE FROM TRAINING SUBCOMMITTEE
9. ITEMS FOR NEXT MEETING'S AGENDA
   - A. REVIEW EB-2020-03
   - B. INITIAL CONSIDERATION EB-2020-04 (ARTICLE II COMPLAINT)
   - C. INITIAL CONSIDERATION EB 2020-05 (ARTICLE II COMPLAINT)
10. NEXT MEETING DATE: DECEMBER 21, 2020 (6:30 – 8:00 PM)
11. ADJOURNMENT

COBI ETHICS BOARD

Regular Meeting

Monday, October 19, 2020

6:30 – 8:00 PM

VIA ZOOM Webinar

Minutes

1. Call to order – Meeting was called to order at 6:35 PM. Present were Jennifer Hodges, Dona Keating, Jim Cash, David Mallon, Dominique Cantwell, Karen Anderson, Tyler Weaver and Robbie Sepler.

2. Disclosure of Conflict of Interest – None.
   A. Acceptance of Meeting Minutes – October 5, 2020 Special Meeting Motion by Dona Keating; 2nd by Dominique Cantwell

3. Public Comment – None.

4. Review and Approval of Operating Rules – Motion to Approve by Dona Keating; 2nd by Tyler Weaver

5. Election of Chair and Deputy Chair
   A. Jennifer Hodges – Chair; Unanimous
   B. David Mallon – Deputy Chair; Unanimous

6. Appointment of Training Subcommittee – Karen Anderson, David Mallon, Dona Keating.

7. Appointment of Planning and Reporting Subcommittee – Dominque Cantwell, Karen Anderson.

8. Draft Committee for response to EB-2020-02 (Article 2 Complaint) – Tyler Weaver, Jennifer Hodges

9. Items for Next Meeting Agenda
   A. Consideration of EB-2020-03 (Article 2 Complaint)
   B. Consideration of Draft Response from Draft Committee
   C. Presentation from Kitsap County Dispute Resolution Center

10. Next Meeting set for October 19, 2020 from 6:30 PM – 8:00 PM

11. Adjournment – Motion Jim Cash; 2nd Karen Anderson meeting adjourned 8:07 PM

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Chair Date

CITY OF BAINBRIDGE ISLAND

Ethics Board
Operating Rules
~~(~~Effective Date: ~~-~~October 19, 2020~~October 19, 2020)~~
(Revised: ________________)

A. Purpose. The City Council has adopted a Code of Conduct and Ethics Program to guide the conduct of Councilmembers and members of City Committees and Commissions. To assist with the administration of the Code of Conduct and Ethics Program, the City Council created the Ethics Board and empowered the Board to adopt, by majority vote, reasonable operating rules consistent with the Code of Conduct and Ethics Program. The purpose of these rules is to allow the Board to perform its normal duties and operate in an efficient, effective, and consistent manner. The operating rules are also intended to provide transparency to the public on the workings of the Ethics Board.

B. Operating Rules.

1. **Chair.** Members of the Ethics Board will elect a chairperson. The Chair will serve for one year and may be re-elected. However, one individual may not hold the position of Chair for more than two successive terms. Responsibilities of the Chair include: presiding over meetings of the Board, organization of the meeting agenda in coordination with the Deputy Chair, distributing work of the Board to individual members, communication with City staff, informing respondents of complaints, requesting responses to complaints, and communicating receipt of complaints to the Ethics Board.

2. **Deputy Chair.** Members of the Ethics Board will elect a Deputy Chair. The Deputy Chair will serve for six months. One individual may not hold the position of Deputy Chair for two successive terms, but may be re-elected to non-successive terms. Responsibilities of the Deputy Chair include: presiding over meetings of the Board in the absence of the Chair, organization of the meeting agenda in coordination with the Chair, taking minutes of meetings of the Board, and serving as time-keeper during public comment periods.

3. **Election of Officers**. Election of officers shall proceed by nomination among members and by a majority vote of the membership of the Ethics Board. The C~~c~~hair shall be elected each July. A D~~d~~eputy C~~c~~hair shall be elected each July and January. The date of election of the Chair, Deputy Chair, or both the Chair and Deputy Chair may be adjusted at the discretion of a majority of the Ethics Board.

4. **Meetings.** All meetings of the Ethics Board are subject to the Open Public Meetings Act, Chapter 42.30 RCW. Regular meetings of the Ethics Board will occur on the third Monday of every month from 6:30 PM to 8:00 PM. Special meetings of the Ethics Board may be called and noticed as needed in accordance with Chapter 42.30 RCW.

   i. *Quorum.* A quorum of the Ethics Board is necessary to transact business of the Board. Four members of the Ethics Board constitute a quorum.

   ii. *Disclosure.* The Ethics Board intends to be a model for transparency and ethical conduct in City affairs. In accordance with the Code of Conduct and Ethics Program, Board members will disclose significant relationships with the City of Bainbridge Island or with individuals subject to the Board's jurisdiction, including all situations that could potentially constitute a conflict of interest or be perceived as a conflict of interest by the public. Disclosures will be an agenda item at each meeting of the Ethics Board. Potential conflicts will be managed by recusal or other means agreed by the Board and consistent with the Code of Conduct and Ethics Program.

   iii. *Public Comment.* Regular meetings of the Ethics Board shall include a period for public comment at the start of the meeting. Special meetings may include a period for public comment, at the discretion of the Board. Members of the public are requested to confine their comments to the public comment period, except at the invitation of the Board. Each member of the public participating in public comment shall limited to three minutes to provide comment, except that, at the beginning of a public comment period, the Chair may provide for a lesser time for public comment if a large number of individuals wish to speak.

   iv. *Remote Attendance.* Members of the Ethics Board may participate by telephone or other electronic means approved by the City's IT staff if unable to attend in person and effective two-way communication can be established. Members planning on attending a meeting remotely are encouraged to provide as much notice as possible to City staff in advance of the meeting.

   v. *Meeting Minutes.* The Deputy Chair shall keep action minutes of each meeting of the Board and provide said minutes to the Board in advance of the next meeting, where they will be reviewed, revised as necessary, and approved. Approved meeting minutes will be posted on the Ethics Board website. Minutes shall record what actions were taken by the Board, not what was said.

   ~~vi.~~ *Parliamentary Procedure.* The Ethics Board will conduct its business using the simplified parliamentary procedure summarized in **Exhibit A**. To the extent that the procedure outlined in **Exhibit A** is ever insufficient to meet the needs of the Ethics Board, then the Ethics Board may, by majority vote, suspend the simplified parliamentary procedure to take what action may be necessary to effectively and efficiently transact the business of the Ethics Board.

5. **Communication with the Public.** The Ethics Board's website at https://www.bainbridgewa.gov/231/Ethics-Board shall be the primary means of communication with the public. Information posted shall include relevant legislation, operating rules, and forms for making complaints or requests under the Code of Conduct and Ethics Program. [OPTION 1: Only the Chair and Deputy Chair's City email addresses shall be published on the website.] [OPTION 2: Only the Chair's City email address shall by published on the website.][OPTION 3: The City Clerk's email address shall be published on the website as the public contact for the Ethics Board]. The Chair, or a member designated by the Chair, shall speak for the Board on matters of public interest. Board members shall not publicly comment on pending complaints or requests except at Ethics Board meetings, unless specifically authorized to do so by the Chair.

Commented [ADT1]: Any of these options are fine. However, I like Option 3 the best. In theory, to insulate the Board further, the Clerk can then forward all e-mails from the public to the Attorney Liaison for screening too.

C. Training

1. **Overview of Training Requirements.** The Ethics Board is responsible for training Councilmembers and members of City Committees and Commissions on the requirements of the Code of Conduct and Ethics Program. Under Article V, Section B, the Ethics Board is responsible for the following:

   i. *Annual Training.* The Training Subcommittee shall develop, and members of the Ethics Board shall present, a training course on the Code of Conduct and the Code of Ethics to be presented annually to all Councilmembers and members of City Committees and Commissions.

   ii. *Pamphlet.* At least every two years, the Training Subcommittee shall prepare, and members of the Ethics Board shall distribute, a pamphlet describing the Code of Conduct (Article I) and Code of Ethics (Article II) to all Councilmembers and members of City Committees and Commissions. The Ethics Board shall ensure that all new Councilmembers and members of City Committees and Commission receive a pamphlet upon election or appointment.

2. **Training Subcommittee.** The Training Subcommittee shall annually be nominated and appointed by a majority of the Ethics Board at the same meeting during which the Chair is elected and shall consist of no more than three members.

D. Complaint and Request Procedures

1. Article I Complaints

   i. *Procedure.* Article III, Section A of the Code of Conduct and Ethics Program outlines the procedure for review of complaints alleging a violation of the Code of Conduct (Article I) by a Councilmember or a member of a City Committee or Commission. These rules supplement Article III, Section A to provide clarity and transparency to the review of Article I complaints.

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~~i.~~ .

ii. *Submission.* Any individual may submit to the City Clerk a complaint alleging violations of the Code of Conduct (Article I) by a Councilmember or a member of a City Committee or Commission. The complaint must be submitted on a form supplied by the City Clerk. The City Clerk may dismiss a complaint that is not made on the correct form, provided that the City Clerk provide instruction to the complainant regarding where the correct form is located and how it may be filled out.

iii. *Transmittal to Ethics Board.* The City Clerk shall refer Article I Complaints concerning a Councilmember or a member of a City Committee or Commission, except for complaints concerning members of the Ethics Board, to the Ethics Board for a threshold determination.

iv. *Ethics Board Review – Threshold Determination*

a. Initial Review by Ethics Board. The Ethics Board will review the complaint at an open public meeting. In accordance with Article III, Subsection A.4 of the Code of Conduct and Ethics Program, the Ethics Board ~~will consider~~shall conduct an initial review of the complaint to determine ~~-~~whether a notice of dismissal or threshold determination is more appropriate under the circumstances.

b. Referral to Subcommittee. Following initial review by the Ethics Board, a majority of the Ethics Board will refer the complaint to a subcommittee of not more than three members to draft either a notice of dismissal or a threshold determination, as may be specified by the Ethics Board at the time of referral, for consideration by the Ethics Board at an open public meeting. However, the subcommittee may, at its discretion after further review, deviate from the manner initially directed by the majority of the Board, if such a deviation is appropriate under the circumstances. ~~The subcommittee may, at its discretion after further review of the complaint, decide whether a dismissal or threshold determination is more appropriate under the circumstances.~~ A representative of the City Attorney's Office shall review the draft notice of dismissal or threshold determination prior to further review by the Ethics Board.

c. Issuance of Threshold Determination or Notice of Dismissal. The Ethics Board will review the draft notice of dismissal or threshold determination prepared by the subcommittee at an open public meeting. A majority of the Ethics Board may do one of the following: (1) refer the draft notice of dismissal or threshold determination back to the subcommittee for additional edits or modifications; (2) adopt and issue the notice of dismissal or threshold determination; or (3) continue review of the draft notice of dismissal or threshold determination at a future meeting.

v. *Ethics Board Review – Article I Advisory Opinion*

a. Response: When Article III, Section A of the Code of Conduct and Ethics Program directs the Ethics Board to prepare an advisory opinion, the Chair of the Ethics Board shall first provide the respondent with a reasonable period of time to submit a written response to the Article I Complaint supported by a declaration in compliance with RCW 9A.72.085. The Chair shall initially request that a response be provided within

Commented [ADT2]: Proposed language to clarify that the Board's first pass is an initial review.

Commented [ADT3]: Proposed new language (I stole from D.2.iv.c) to clarify that the subcommittee is presumed to draft a dismissal or determination consistent with the Board's decision after initial review, if an initial decision is made. But, this language also empowers the subcommittee to deviate from the Board's initial decision.

I also changed the language in Section D.2.iv.c to remain consistent.

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two weeks, but the Chair may provide for additional time as circumstances warrant.

b. Initial Review by Ethics Board. Upon receipt of a response from the Respondent, if submitted within the time period indicated by the Chair, the Chair will schedule time at an open public meeting for the Ethics Board to review the complaint and response, if submitted.

~~b.~~ .

c. Referral to Subcommittee. Following initial review by the Ethics Board, a majority of the Ethics Board will refer the complaint to a subcommittee of not more than three members to draft an advisory opinion for consideration by the Ethics Board at an open public meeting. The draft advisory opinion shall be prepared in the manner directed by a majority of the Ethics Board at the time of referral and shall be drafted in accordance with the requirements of Article III, Subsection A.6 of the Code of Conduct and Ethics Program. A representative of the City Attorney's Office shall review the draft advisory opinion prior to review by the Ethics Board.

d. Issuance of Advisory Opinion. The Ethics Board will review the draft advisory opinion prepared by the subcommittee at an open public meeting. A majority of the Ethics Board may do one of the following: (1) refer the draft advisory opinion back to the subcommittee for additional edits or modifications; (2) adopt and issue the advisory opinion; or (3) continue review of the draft advisory opinion to a future meeting.

2. Article II Complaints

i. *Procedure.* Article III, Section B of the Code of Conduct and Ethics Program outlines the procedure for review of complaints alleging a violation of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission. These rules supplement Article III, Section B to provide clarity and transparency to the review of Article II complaints.

ii. *Submission.* Any individual may submit to the City Clerk a complaint alleging violations of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission. The complaint must be submitted on a form supplied by the City Clerk. The City Clerk may dismiss a complaint that is not made on the correct form, provided that the City Clerk provide instruction to the complainant regarding where the correct form is located and how it may be filled out.

iii. *Transmittal to Ethics Board.* The City Clerk shall refer Article II Complaints concerning a Councilmember of a member of a City Committee or Commission, except for complaints concerning members of the Ethics Board, to the Chair of the Ethics Board.

iv. *Ethics Board Review*

a. Response. The Chair of the Ethics Board shall notify the Respondent of the complaint and provide the Respondent with a copy of the complaint, via email to the respondent's City email address. The notice email from the Chair shall set ~~provide the respondent with~~ a reasonable period of time for the Respondent to submit a written response to the Article II Complaint supported by a declaration in compliance with RCW 9A.72.085. The Chair shall initially request that a response be provided within two weeks, but the Chair may provide for additional time as circumstances warrant. If, one week prior to the deadline given to the Respondent to submit a response, the Chair has not received any reply from the Respondent, the Chair shall send a second notice and again provide the Respondent with a copy of the complaint, via email to the Respondent's City email address. In the second notice, the Chair shall offer to extend the deadline if circumstances warrant, and shall inform the Respondent that if the Respondent does not ~~respond~~provide a response to the complaint within the deadline established in the first notice, or request and receive approval for additional time to respond, the complaint will be taken up for consideration by the Ethics Board without a response.

~~a.~~

Commented [ADT4]: Proposed language to clarify what must be included in second notice to Respondent.

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b. Initial Review by Ethics Board. The Chair will schedule time at an open public meeting for the Ethics Board to review the complaint and response, if submitted, upon the happening of one of the following: upon receipt of a response from the Respondent, if submitted within the time period indicated by the Chair; or, where no response was submitted within the time period indicated by the Chair, at the first regular meeting of the Ethics Board following the expiration of the time period to submit a response indicated by the Chair. At the open public meeting, the Ethics Board will consider what action under Article III, Subsection B.7 is appropriate. If a majority of the Ethics Board determines that either a notice of dismissal or a determination is appropriate, then the complaint shall be referred to a subcommittee as specified below. If a majority of the Ethics Board determines that the complaint is the subject of litigation, then the Ethics Board will hold the complaint for action at a future time.

c. Referral to Subcommittee. Following initial review by the Ethics Board, a majority of the Ethics Board will refer the complaint to a subcommittee of not more than three members to draft either a notice of dismissal or a determination, as may be specified by the Ethics Board at the time of referral,~~as specified by the Ethics Board at the time of referral,~~ for consideration by the Ethics Board at an open public meeting. However, the subcommittee may, at its discretion after further review, deviate from the manner initially directed by the majority of the Board, if such a deviation is appropriate under the circumstances. ~~The subcommittee may, at its discretion after further review of the complaint, decide whether a dismissal or threshold determination is more appropriate under the circumstances.~~ A representative of the City Attorney's Office shall review the draft notice of dismissal or determination prior to further review by the Ethics Board.

d. Response Submitted After-the-Fact. A Respondent who fails to submit a response prior to the Ethics Board's initial review of a complaint, but who wishes to submit a response after-the-fact for consideration by the Ethics Board, may be allowed to do so at the discretion of the Chair. In deciding whether to consider a response submitted after-the-fact, the Chair shall take into consideration the following factors: (1) Respondent's reasons for not submitting a timely response; (2) that the general goal of Ethics Board Review guidelines is to effect, to the extent possible, the contemporaneous consideration of Complaint and Response; (3) that this contemporaneous consideration is fair to both Complainant and Respondent; (4) whether allowing a response to be considered after-the-fact would erode the incentive to other Respondents to timely respond; (5) whether allowing a response to be considered after-the-fact might require another review of both Complaint and Response by the entire Ethics Board. In any event, a response submitted after-the-fact in an action under Article III, Subsection B.7 shall be included among the documents forwarded to the Hearing Examiner for review.

~~c.~~e. Issuance of a Notice of Dismissal or Determination. The Ethics Board will review the draft notice of dismissal or threshold determination prepared by the subcommittee at an open public meeting. A majority of the Ethics Board may do one of the following: (1) refer the draft notice of dismissal or threshold determination back to the subcommittee for additional edits or modifications; (2) adopt and issue the notice of dismissal or determination; or (3) continue review of the draft notice of dismissal or determination

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to a future meeting.

3. Requests for Advisory Opinions

i. *Procedure.* Article III, Section D of the Code of Conduct and Ethics Program outlines the procedure for review of requests for advisory opinions by Councilmembers or members of City Committees or Commissions. These rules supplement Article III, Section D to provide clarity and transparency to the review of Article I complaints.

ii. *Submission.* Only those individuals specified in Article III, Subsections D.1.a-d may submit to the City Clerk a request for an advisory opinion. The request must be submitted on a form supplied by the Ethics Board. The City Clerk may dismiss a request for one or both of the following reasons:

a. The request was not submitted on the correct form, supplied by the Ethics Board, provided that the City Clerk provide instruction to the requestor regarding where the correct form is located and how it may be filled out; or

b. The request is not made by an individual authorized to make a request under Article III, Subsections D.1.a-d.

~~b.~~

Formatted: Right, Indent: Left: 1.16", No bullets or numbering *iii.* *Transmittal to Ethics Board.* The City Clerk shall refer requests for advisory opinions to the Ethics Board for review.

iv. *Ethics Board Review*

a. Initial Review by Ethics Board. Upon receipt of a request for an advisory opinion, the Chair will schedule time at an open public meeting for the Ethics Board to initially review the request.

b. Referral to Subcommittee. Following initial review by the Ethics Board, a majority of the Ethics Board will refer the request to a subcommittee of not more than three members to draft an advisory opinion for consideration by the Ethics Board at an open public meeting. The draft advisory opinion ~~shall~~ shall be prepared in the manner directed by a majority of the Ethics Board at the time of referral and shall be drafted in accordance with the requirements of Article III, Section D of the Code of Conduct and Ethics Program. The subcommittee may, at its discretion after further review, deviate from the manner initially directed by the majority of the Board, if such a deviation is appropriate under the circumstances. A representative of the City Attorney's Office shall review the draft advisory opinion prior to review by the Ethics Board.

c. Issuance of Advisory Opinion. The Ethics Board will review the draft advisory opinion prepared by the subcommittee at an open public meeting. A majority of the Ethics Board may do one of the following: (1) refer the draft advisory opinion back to the subcommittee for additional edits or modifications; (2) adopt and issue the advisory opinion; or (3) continue review of the draft advisory opinion to a future meeting.

4. Requests for Waivers

i. *Procedure.* Article III, Section E of the Code of Conduct and Ethics Program outlines the procedure for a Councilmember to request a waiver from the Ethics Board of the conflict of interest restrictions related to the hiring of and supervision over family members, as provided by Article II, Section G. These rules supplement Article III, Section E to provide clarity and transparency to the review of requests for waivers.

ii. *Submission.* Councilmembers may submit a request for a waiver to the City Clerk on a form supplied by the Ethics Board. The City Clerk may dismiss a request that is not made on the correct form, provided that the City Clerk provide instruction to the complainant regarding where the correct form is located and how it may be filled out.

iii. *Transmittal to Ethics Board.* The City Clerk shall refer request for waivers to the Ethics Board for review.

iv. *Ethics Board Review*

~~a.~~ Initial Review by Ethics Board. Upon receipt of a request for a waiver, the Chair will schedule time at an open public meeting for the Ethics Board to initially review the request.

a.

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b. Referral to Subcommittee. Following initial review by the Ethics Board, a majority of the Ethics Board will refer the request to a subcommittee of not more than three members to draft a response for consideration by the Ethics Board at an open public meeting. The draft response shall be prepared in the manner directed by a majority of the Ethics Board at the time of referral and shall be drafted in accordance with the requirements of Article III, Section E of the Code of Conduct and Ethics Program. A representative of the City Attorney's Office shall review the draft response prior to review by the Ethics Board.

c. Action by Ethics Board. The Ethics Board will review the draft response prepared by the subcommittee at an open public meeting. A majority of the Ethics Board may do one of the following: (1) refer the draft advisory opinion back to the subcommittee for additional edits or modifications; (2) adopt and issue the advisory opinion; or (3) continue review of the draft advisory opinion to a future meeting.

E. Preparation of Annual Report and Work Plan

1. **Overview.** By February 15 of each year, the Ethics Board shall submit an annual report to the City Council summarizing its activities during the previous calendar year and work plan for the following year. The report shall include any recommendations for modifying the Code of Conduct and Ethics Program as well as all training requested by the Ethics Board.

2. **Annual Reports.** Reports may include but are not limited to: the number and type of any complaints, advisory opinions, and waivers; proposed or enacted changes to the Code of Conduct and Ethics Program; documents created; composition of membership; proposed or completed trainings; and community outreach.

3. **Work Plan**. Work plans may include but are not limited to: the articulation of strategic goals, action or proposed initiatives; continuation of pending agenda items; and preparation for rotation of roles, responsibilities, and board membership.

4. **Planning and Reporting Subcommittee.** The Planning and Reporting Subcommittee shall annually be nominated and appointed by a majority of the Ethics Board at the same meeting during which the Chair is elected and shall consist of no more than three members.

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Commented [ADT6]: Renumbered this section and subsections to remain consistent with he rest of this document.

Exhibit A

SIMPLIFIED PARLIAMENTARY PROCEDURE

To do this:	You say this:	May you interrupt speaker?	Second Req.?	Is motion debatable ?	Vote required
Introduce business	"I move that ..."	NO	YES	YES	MAJORITY
Amend a motion	"I move to amend this motion"	NO	YES	YES	MAJORITY
Table a matter for later discussion	"I move we table it"(until when?)	NO	YES	NO	MAJORITY
Take up a matter previously tabled	"I move to take from the table ..."	NO	YES	NO	MAJORITY
Postpone discussion to a specific time	"I move we postpone this matter until ..."(when?)	NO	YES	YES	MAJORITY
Call the question (i.e., end debate and vote on a matter)	"I call the question."	NO	YES	NO	MAJORITY
Have something further studied by a committee	"I move we refer ..."	NO	YES	YES	MAJORITY
Ask for a vote count to verify a voice vote	"I call for a division of the house"	NO	NO	NO	NO VOTE
Object to considering some matter	"I object to consideration"	YES	NO	NO	MAJORITY
Reconsider something already disposed of	"I move we reconsider action on ..." (time-date?)	YES	YES	YES	MAJORITY
Consider something in unscheduled order	"I move we suspend the rules and ..."	NO	YES	NO	MAJORITY
Vote on a ruling by the chair	"I appeal the chair's decision"	YES	YES	YES	MAJORITY
Object to procedure or personal affront--chair decides	"Point of order"	YES	NO	NO	NO VOTE
Complain about noise, room temperature, etc.	"Point of privilege"	YES	NO	NO	NO VOTE
Request information	"Point of information"	YES	NO	NO	NO VOTE
Recess the meeting	"I move that we recess until ..."	NO	YES	NO	MAJORITY
Adjourn the meeting	"I move that we adjourn"	NO	YES	NO	MAJORITY

DRAFT

November ___, 2020

DETERMINATION LETTER: EB 2020-02

Submitted to City Clerk:	September 11, 2020
Forwarded to Ethics Chair:	September 23, 2020
Notice to Respondent:	September 23, 2020 (email)
	October 13, 2020 (email)
Response Deadline:	October 7, 2020
Response Received:	October 26, 2020
Initial Consideration:	October 16, 2020

DETERMINATION: Refer to Hearing Examiner for further proceedings

I. Summary of Complaint

This Complaint alleges a violation of Article II, Section C of the City of Bainbridge Island Code of Conduct and Ethics Program, effective July 28, 2020 ("the Program"), which states:

> "Except as required by law, a Councilmember, former Councilmember, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential, or propriety [sic] information obtained in executive session or otherwise in the course of their duties as a result of their position."

The Complaint and its supporting documents (collectively, the "Complaint") consists of the following:

1. Article II (Code of Ethics) Complaint Form;
2. Detailed description of Article II complaint;
3. April 18, 2018 email from Respondent to a citizen; and
4. Copy of newspaper article, Bainbridge Island Review dated April 14, 2018.

Complainant alleges Respondent violated Article II, Section C by wrongfully disclosing confidential information obtained in a City Council executive session. Complainant alleges that on April 3, 2018, he and the Respondent were both sitting City Councilmembers, and that on that day they both attended and participated in a City Council executive session during the course of which Complainant proposed the use of eminent domain to purchase a parcel of real property for city use. Complainant alleges two separate violations of Article II, Section C by the Respondent stemming from, and subsequent to, the one executive session on April 3, as follows:

1. Complainant alleges that on April 10, 2018, Respondent wrongfully disclosed, in a statement made publicly during a City Council meeting, that the City Council had discussed the use of eminent domain to acquire the property; he further alleges that

Respondent's statement was published in an article in the Bainbridge Island Review on April 14, 2018.

2. Complainant alleges that on April 18, 2018, Respondent wrongfully disclosed, during the course of an email exchange between Respondent and a member of the public, that the use of eminent domain to acquire the parcel had been originally proposed by Complainant.

Complainant alleges that this wrongfully-disclosed confidential information could only have been obtained by and/or known to Respondent "by virtue of [Respondent's] attendance" at the City Council executive session on April 3, 2018, and not through any other source, event, or method.

Complainant cites three potential adverse consequences of a breach of confidentiality: 1) when an elected official uses confidential information for his personal gain; 2) when disclosure of confidential information has adverse consequences for the City; and 3) when the disclosure of confidential information violates "trust." Complainant does not claim that Respondent's alleged breach of confidentiality resulted in any personal gain; nor does he claim that it resulted in any adverse consequences for the City. He does, however, claim that Respondent's disclosure of confidential information violated "trust."

II . Summary of Response

There is no Response that the Ethics Board has considered.

The Respondent was emailed a copy of the Complaint on September 23, 2020 to his City email address, and he was informed that his response was due by October 7, 2020 but that he could request a longer period of time if needed. No response was received by October 7, 2020. The Ethics Chair sent another email to Respondent regarding this matter on October 13, 2020, and again received no response. The Ethics Board considered the matter at its regular meeting on October 16, 2020. Following that meeting, Respondent submitted a substantive Response on October 26, 2020. The Ethics Board has not considered that Response because the submission was untimely.

The Ethics Board has concluded that the notice given to the Respondent was adequate. The method of notifying the Respondent – by notice to his City email – is consistent with the Program and also with past practices of the Ethics Board. In addition, the Respondent admits that he received the emails on September 23 and October 13, but, for whatever reason, he did not read them. The Ethics Board also notes that the Respondent received email notice of a second, different complaint around the same time, and that Respondent read and responded to that notice.

Given that the notice was adequate, but no Response was filed until well after the deadline to respond, the Ethics Board has not considered the Response. The Ethics Board has concluded that consideration of a late response following adequate notice would undermine the need for respondents to timely respond to complaints and would jeopardize the efficient consideration of complaints.

However, the Board will provide to the Hearing Examiner a copy of the Response so that the Hearing Examiner can decide whether it is appropriate to consider under the procedures applicable to that proceeding.

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III. Analysis of Complaint

A . Timeliness of Complaint

The Complaint concerns conduct that occurred in the spring of 2018, but the Complaint was not filed with the City Clerk until September 11, 2020.

The Complainant cites two reasons to account for this delay of more than two years: 1) his initial hesitation to file a complaint at all; and 2) a belief that the complaint, if filed earlier, would have sat "in limbo" until after the City Council finished revising the Program and installed a full and functioning Ethics Board to process complaints through it.

The Ethics Board notes that a two-year delay between the alleged violation and the filing date of the Complaint is highly unusual. The Ethics Board also has questions about the validity of the stated reasons for the delay. However, the Ethics Board does not have authority to engage in fact-finding and therefore cannot make findings about the stating reasons for the delay

In addition, the Program does not contain a time limit for filing complaints, and thus the Ethics Board lacks the authority to reject any complaint as untimely. Therefore, the Ethics Board considers this Complaint substantively.

B. The Respondent's Standing

The Complaint was filed on September 11, 2020. Respondent announced his resignation from the City Council on October 14, 2020. His resignation will be effective November 10, 2020, before this determination is final. The Ethics Board is thus presented with a situation in which the Complaint was filed while Respondent was a member of the City Council, but determination of any violation will not be made until after the Respondent has resigned.

The Program does not grant the Ethics Board the authority to dismiss a Complaint because a Respondent is, or will no longer be, a Councilmember. Article III, Section B.7 of the Program provides that the Ethics Board's "shall" take one or more of six specific actions with regard to a complaint, none of which allow the Ethics Board to consider a Councilmember's status, nor whether there exists any effective remedy for a violation of the Program. The Ethics Board therefore cannot dismiss the Complaint due the Respondent's resignation.

Furthermore, Respondent is alleged to have violated Article II, Section C., Confidentiality, which applies to "former Councilmember[s]."

The Ethics Board is aware that the Hearing Examiner previously dismissed a Complaint because it was filed after the respondents had resigned. However, that matter can be distinguished from the situation at issue here, where the Complaint was filed <u>before</u> the resignation. The Hearing Examiner may decide to dismiss this Complaint similarly. However, dismissal on those grounds is for the Hearing Examiner to decide, not the Ethics Board.

C. <u>Substantive Review of Complaint under Article III, Section B.7</u>

Article III, Section B.7 of the Program directs the Ethics Board to dismiss an Article II Complaint if:

1. The Complaint alleges violations of the Code of Conduct (Article I) rather than violations of Article II (Section B.7.a);
2. The Complaint lacks reasonable credibility (Section B.7.b);
3. The facts stated in the Complaint, even if true, do not constitute a violation of Article II (Section B.7.c);
4. The facts stated in the Complaint, even if true, would <u>not</u> constitute a material violation of Article II 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 Article II (Section B.7.d); or
5. The subject matter of the Complaint, at any time during the Ethics Board's review, is the subject of litigation (Section B.7.e).

Otherwise, Article III, Section B.7.f directs the Ethics Board to forward a Complaint to the Hearing Examiner if it finds that the facts asserted in the Complaint appear credible and appear to constitute a violation of Article II (Section B.7.f). The Ethics Board has considered each of the possible options in Article III, Section B.7.

The Ethics Board declines to dismiss the Complaint, pursuant to Section B.7.a, because the Complaint does not allege a violation of Article I.

Dismissal of the Complaint under Section B.7.b is also inappropriate. "Reasonable credibility" is a low standard that requires only a determination that there is some reason to believe that what has been alleged is true. Further, the Ethics Board cannot undertake any investigation and therefore in most cases can only consider the allegations of a complaint and any response. Given those limitations, the Ethics Board has concluded that the Complaint's substantive allegations are reasonably credible, as they are based on the observations of a former Councilmember who was present at the executive session that forms the basis of the Complaint.

Under Section B.7.c, the Ethics Board must dismiss this Complaint if it finds that the facts asserted "even if true" would not constitute a violation of Article II." The relevant facts, which the Ethics Board must assume to be true for this analysis, are that: (1) the Complainant's proposal to use eminent domain occurred during – and only during - an executive session that included Respondent, and that (2) Respondent subsequently disclosed Complainant's eminent-domain proposal to the public. If these facts are true, it appears that Respondent may have violated Article II, Section II. Therefore, the Ethics Board cannot dismiss the Complaint under Section B.7.c.

Under Section B.7.d, the Ethics Board must dismiss this Complaint if the facts asserted "even if true, would not constitute a material breach 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 … Article II." The Ethics Board understands this provision to provide that a breach is material unless it is (1) inadvertent, (2) minor, or (3) has been adequately cured.

The Ethics Board does not believe the circumstances as presented indicate that any breach was inadvertent. The Complaint alleges, and the Ethics Board must assume, that Respondent made two knowing disclosures of information he only could have learned during executive session. That would not have been inadvertent.

The Ethics Board also has no reason to believe that any breach has been adequately cured.

As to whether the alleged violation is "minor," the Ethics Board is again limited by its inability to conduct investigations, and the requirement that it rely on the allegations before it. The Complaint alleges that the disclosure in this case was a breach of trust because Councilmembers "should be able to speak freely without worrying about whether or not their words will later be used against them by a colleague." It may be that an investigation would conclude that this is true, and that trust was or could be eroded by the disclosure that happened here. An investigation might also show the opposite – that this disclosure did not erode any such trust, or that eminent domain is routinely discussed outside of executive session. But it is not the role of the Ethics Board under the Program to make such factual determinations, and therefore, assuming the factual allegations in the Complaint are true, the Ethics Board cannot conclude that alleged violation was minor. Thus, the Ethics Board cannot dismiss the Complaint outright under Section B.7.d.

The Ethics Board also does not dismiss the Complaint pursuant to Section B.7.e. The Ethics Board has not been made aware that this matter is the subject of litigation.

Under Section B.7.f , if the facts asserted in the Complaint appear credible and appear to constitute a violation of Article II, the Ethics Board shall forward the Complaint to the Hearing Examiner for review. Therefore, the Ethics Board forwards the matter the Hearing Examiner for further review.

IV. ***Determination***

After review, the Ethics Board finds the Complaint reasonably credible and, if the facts it asserts are true, appears to constitute a violation of Article II such that a material breach may have occurred.

Accordingly, the Ethics Board will forward to the City Clerk, for forwarding to the Hearing Examiner, a copy of (1) the Complaint and associated documentation, (2) the emails in which the Ethics Board Chair provided notice to Respondent; (3) the Response; and (4) this Determination Letter.

Article II (Code of Ethics)
Ethics Complaint Form

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission should complete this form and submit it, along with any supporting documents, to the City Clerk at cityclerk@bainbridgewa.gov.

II. Your Contact Information:

Name: Ron Peltier
Address: 11186 Valley Heights Circle NE, Bainbridge Island, WA 98110

III. Article II Complaint:

A. Please provide the name of the Councilmember or the member of a City Committee or Commission who is the subject of your complaint (this individual is referred to as the "Respondent"): **Kol Medina**

B. Please identify the section(s) or subsection(s) of the Code of Ethics (Article II) that you believe were violated by the Respondent: **Article II.C. Confidentiality**

C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Ethics (Article II) indicated above. If necessary, please attach additional pages. If other records exist that you believe support your allegation (e.g., emails or other documents), please attach them to this form as well.

Council member, and former Mayor, Kol Medina disclosed confidential information regarding an executive session discussion on 4/3/18 regarding the acquisition of property for a new police and court facility. See attached pages:

1. **Detailed description of Article II complaint against CM Medina;**
2. **April 18, 2018 email to Linda Allen by CM Medina;**
3. **April 14, 2018 Bainbridge Review article about CM Medina eminent domain comments during the April 10, 2018 city council meeting.**

I certify under penalty of perjury under the laws of the State of Washington that the foregoing, including any additional pages or records attached by me, are true and correct.

Date: 9/11/20 Place: Bainbridge Island, WA

Signature Ron Peltier

Ethics Complaint
Submitted by Ron Peltier, Bainbridge Island, WA
September 11, 2020

From the City of Bainbridge Island Ethics Program

Article II

C. Confidentiality
Except as required by law, a Councilmember, former Councilmember, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential, or propriety information obtained in executive session or otherwise in the course of their duties as a result of their position.

COMPLAINT

Violations of Confidentiality by CM Kol Medina
In the Spring of 2018 the Bainbridge Island City Council was engaged in discussions about the acquisition of property on which to site a new police and court facility. Numerous executive sessions were conducted in accordance with State law to discuss various potential sites and possible strategies for their acquisition. On two occasions CM Medina disclosed details from the April 3, 2018 executive session to members of the public without permission from a majority vote of the City Council:

1. During the City Council's April 10, 2018 meeting then Mayor Medina announced that the Council had discussed the possible use of eminent domain to acquire a site for a police and court facility, and;
2. On April 18, 2018 CM / Mayor Medina disclosed in an email communication to a member of the public that a specific council member had introduced and supported the possible use of eminent domain to acquire property for a new police and court facility.

The details of both disclosures by then Mayor Medina came directly from the April 3, 2018 executive session with no other public disclosure or discussion. The disclosed details were known only by CM Medina by virtue of his attendance at the April 3, 2018 executive session.

1st breach of confidentiality by CM Medina regarding details of the City Council's April 3, 2018 executive session

During a City Council meeting on April 10, 2018 then Mayor Medina announced that the City Council had discussed the possible use of eminent domain to acquire property for a new police and court facility. This fact was unknown to the general public and had not previously been mentioned publicly outside of executive session.

While the City Council can agree to release details from executive sessions, no such vote had taken place in regards to the April 3, 2018 executive session.

Disclosing a general topic discussed in executive session, in this case property acquisition, is allowable but council members are otherwise obligated by the City's ethics rules, as well as by state law, to maintain confidentiality in regards to the details of executive session discussions.

Council member Medina's comments regarding eminent domain during the April 10, 2018 city council meeting were reported on April 14, 2018 in the Bainbridge Island Review (article attached to this complaint). The City Council subsequently received numerous emails objecting to the possible use of eminent domain, which appeared to benefit Mayor Medina's preference for acquiring the Harrison medical building, which the City would later purchase from CHI Franciscan for approximately $9 million, approximately $2 million over its appraised value as a medical facility. The City, under Mayor Medina's leadership, never had the Harrison facility appraised for use a public safety building.

2nd breach of confidentiality by CM Medina regarding details of the City Council's April 3, 2018 executive session

On April 18, 2018, then Mayor Medina sent an email to a member of the public in which he disclosed more details about the Council's April 3, 2018 executive session, specifically the identity of the council member who had brought up and supported the possible use of eminent domain during that meeting.

Background on the 2nd breach of confidentiality regarding the April 3, 2018 executive session. I was a member of the Bainbridge Island City Council from January 1, 2016 until December 31, 2019. As part of the April 10, 2018 City Council regular business meeting, agenda item 7.D. *Police/Municipal Court Facility Site Selection*, I had proposed a new process for evaluating prospective sites. The proposed process involved the use of a weighted matrix, an approach previously used by the City but in a way that was less than rigorous, objective, or transparent. My proposal was intended to address those deficiencies and involved a citizens task force of experts to first of all help identify criteria the matrix, how those criteria would be weighted, and how prospective sites should be scored. This would have been a significant improvement over the previous process in which a consultant, closely managed by the City Manager, was given the task of identifying criteria and scoring potential sites with no City Council discussion or input.

Without going into too much detail here, I had reason to believe the City Manager had engaged in manipulation of the evaluation process behind closed doors, a factor that had previously contributed to the City Council's 2014 decision to forego an offer by the Bainbridge Island Fire Department to collocate the City's police and court facility at new fire station #21. This was confirmed by two of the consultants who had worked with the City on site selection in conversations I had with them. Colocation with BIFD for police and court was estimated at $7.5 million. When completed, BIFD station #21 was completed on budget, an indication that the $7.5 million estimate was reasonably accurate.

Also worth noting: an architect who had worked for the City to evaluate the colocation option confirmed to me that the fire station would have accommodated both a police and court facility. In short, the failure to seriously pursue the colocation option at BIFD #21 was the result of a highly flawed evaluation process that will eventually cost the City and tax payers millions of dollars. My intent was to correct that flawed process and bring it out from behind closed doors where it was likely being manipulated.

For his part, CM/Mayor Medina was evidently angered by my proposed site selection process and by an email I sent out on April 11, 2018, the day after the April 10, 2018 City Council meeting. In my April 10, 2018 email I disparaged what I regarded as the City Council's preferred approach of relying heavily on expensive consultants as opposed to being committed to objective facts and analysis. The email was sent to a list of citizens to whom I made a practice of providing regular reports. CM Medina's displeasure with my comments is evidenced by his April 18, 2018 email (Exhibit A). He appears to be especially offended by my suggestion that the site selection process previously employed by the City was less than methodical and informed and mockingly repeats the phrase "methodical and informed" several times to make clear his disdain for my opinions regarding the City's existing site selection process.

Council member Medina's use of disparaging and mocking language in his April 18, 2018 email does not constitute a breach of ethics but his use of confidential information, specifically that I was the council member who proposed the possible use of eminent domain, does constitute a blatant breach of confidentiality and a violation of the City's Code of Ethics. This is part what council member Medina said in his April 18, 2018 email to a constituent:

"I have no interest in using eminent domain. Councilmember Peltier is the Councilmember who raised and pushed the idea of using eminent domain. That idea is on the table because of his strong support for it.

The identity of who had proposed and supported the use of eminent domain came directly from the City Council's April 3, 2018 executive session. It was the only place where I expressed such support. Prior to being entered into the public record by council member Medina's April 18, 2018 email, this detail from the April 3, 2018 City Council executive session had not been discussed outside of executive session and was otherwise not publicly known or on the public record. The only other mention of eminent domain, as it related to the site selection process, was by then Mayor Medina during the City Council's April 10, 2018 regular business meeting. No other council members said anything publicly about the eminent domain discussion outside of the 4/3/18 executive session.

The April 11, 2018 email from me, which council member Medina refers to in his April 18, 2018 email comments, is included here as Exhibit B.

Confidentiality is about trust and integrity

There are good reasons why we have an ethics rule regarding confidentiality. Details from executive sessions can have adverse consequences for the City. Confidential information gained by elected officials could also be used for personal gain, and that's not right. There's another reason: trust. When a member of the city council sits in an executive meeting with his or her colleagues, and others, those in attendance should be able to speak freely without worrying about whether or not their words will later be used against them by a colleague. That's the deal. That's State law and an integral part of the City's Ethics Program. Contrary to what appears to have been the belief of former Mayor Medina, the City's Council elected Mayor does not have the authority to release details of executive meetings to the public through some special authority. No such special authority exists. Only a majority of the city council can decide when to release confidential information, something that did not take place in regards to the April 3, 2018 executive session.

Why the delay in filing this complaint?

Up until December 31, 2019 I was a member of the Bainbridge Island City Council and a colleague of CM Medina. During that time I was not comfortable with the idea of filing an ethics complaint against a city council colleague. I would have filed this complaint at the beginning of 2020, after my term had ended, but all but one of the City's Ethics Board resigned in January and the Board has just recently been reconstituted with new members. Had I filed this complaint earlier it would have sat in limbo for months without being processed, something I was not comfortable with. There's a third factor for my decision to file this complaint against council member Medina, at all.

During his reelection campaign council member Medina made ethics and accountability a central theme in his platform, portraying himself as a champion and righteous enforcer of ethics in city government. It seems only fitting that someone who has championed accountability, and for the highest standards for elected officials, be held to the same expectations, especially in regards to possible violations the City's Code of Ethics.

Summary

Council member Medina is on record stating that city council members should be held to the highest standards and campaigned for reelection in 2019 on a platform that stressed accountability. The City's highest standards are contained in its Code of Ethics. One of the tenets of that code is in regards to confidentiality and the ethical obligation to honor the trust placed in council members when they become a party to confidential information through their position. City Council member and former Mayor Kol Medina broke that trust by violating confidentiality on two occasions.

1. 1st, during a city council meeting on 4/10/18, when he publicly disclosed that a discussion by the City Council regarding the possible use of eminent domain had occurred, pulling this detail directly from the 4/3/18 city council executive session and;
2. Again, on 4/18/18, in an email sent to a member of the public, when he provided details as to who had brought up and supported the possible use of eminent domain during the city council's 4/3/18 executive session.

These are clear violations of the City's Code of Ethics and do not reflect the actions of an elected official holding himself to the City of Bainbridge Island's highest ethical standards. These are the actions of an elected official who considers himself above the rules he believes others should be held accountable to.

EXHIBIT A

From: Kol Medina
Sent: Wednesday, April 18, 2018 1:18 PM
To: Linda Allen
Cc: Ron Peltier
Subject: RE: Police/Court Facility Site Selection Update

Hi Linda,

Thank you for writing. It's always nice to hear from you.

I have no interest in using eminent domain. Councilmember Peltier is the Councilmember who raised and pushed the idea of using eminent domain. That idea is on the table because of his strong support for it.

Last week, a majority of Council did not agree with Councilmember Peltier's suggestion that we create a citizens task force for the police facility. In his email below, he claims that his suggestion failed because the rest of the Council is not interested in using a "methodical and informed approach to selecting a new police facility." That's pretty iron.

In fact, the very reason why a majority of Council did not agree to move forward with Councilmember Peltier's suggestion is because a methodical and informed approach is what we have been using and what has led us to the place we are at. If the options the City is looking at now fail to pan out, then at that point we will, I'm sure, go back to the drawing board and start over with another "methodical and informed approach." At that point (if it were to arrive), I would encourage Councilmember Peltier to bring forward his citizen task force suggestion again. But a majority of Council agreed that we should finish the current "methodical and informed approach" before stopping it and starting over with a different process.

And in fact, the City has gone through a good number of "methodical and informed approaches" to this police station over the years. I was talking with someone today who told me that the first study he saw done relating a new site for the police station was in 1985. That study found that the best site for the police station was on what is now the City Hall site (the idea was to co-locate them). So the City has been doing "methodical and informed approach" after "methodical and informed approach" on this since at least 1985.

As far as I know, NONE of those "methodical and informed approaches" said that the current site is the best site for the police station. I'm willing to trust the countless number of experts who have cogently looked at this for the last 33 years and have all decided (as far as I know) that the current site is not the best site. And aside from trusting them, I'm willing to trust our Police Chief when he stands in our meetings and tells us that he would prefer a site in the vicinity of High School Road, Madison, HWY 305 over the current site. Point being: It's not that the Council has not given the current site consideration; It has been considered a lot and never found to be the best site.

Below is text from an email that I sent to someone else that relates here.

I want to respond and let you know that the City has already done what you are proposing, more than once. The main reason why 4 Councilmembers were not in favor of the process proposed by the other 2 Councilmembers is because we've already done it, multiple times. For instance, the factors you list below are not new. They are, more or less, contained in various studies done by the City over the years.

Most recently, the City completed a scored matrix for 6 properties early last year (or maybe mid- to late-2016). You'll find another report from 2014 scoring 4 other properties. You'll also find the factors listed and discussed in great detail in the 2006 study that the City commissioned to help it find a location for a police station. The City has had those factors in front of it for 12 years. You can find everything that I'm referring to here: www.bainbridgewa.gov/528/Police-Facility-Planning .

Strangely, I see that that webpage is missing one of the reports I've just referred to, so I've attached it (or a summary of it) to this email. And I will make sure it gets placed on the website.

Those are my thoughts, Linda. I hope something I've said is useful.

Thanks,
Kol

EXHIBIT B

-----Original Message-----
From: Ron Peltier <rpeltier@bainbridgewa.gov>
Sent: Wed, Apr 11, 2018 10:25 pm
Subject: Police/Court Facility Site Selection Update

Dear Islanders,

I hope this update from City Hall finds you well.

Last night the Bainbridge City Council discussed site selection for a new police/court facility. Before us was consideration of the CHI Franciscan property next to the Baptist church, the Coultas property on New Brooklyn near the BARN, and a site selection process proposal put forth by Rasham Nassar and myself.

Our site selection process proposal, which is attached, would have focused on the use of a weighted criteria matrix to evaluate a comprehensive list of potential sites. The proposed process would have included a task force to fine tune the criteria and scoring for each site. It's a methodical process that can include unlimited criteria, each weighted according to importance. Used properly it can be an extremely useful tool for making informed decisions. It was rejected by four council members, Medina, Blossom, Tirman and Deets. I guess I was disappointed but I really not surprised.

As an elected official I'm committed to doing my best to make informed decisions, based upon facts and analysis. Call me old fashioned but I bet most of you expect the same. You think everyone would get that, but they don't. Over last two years on City Council I've been struck by just how resistant most of my colleagues are to taking a methodical and informed approach to selecting a site for a new police facility. Most surprising has been a complete unwillingness to give serious consideration to the existing site near the ferry. Is it me? Am I the problem here and just don't realize it?

That reminds me of an experiment my friend Marc Joslyn told me about. It's about a test done to evaluate the effect of groups on the judgment of individuals. It starts out with an individual being shown a picture of a piece of rope. He looks at it and estimates the length to be about one foot. Later this one person is mixed in with a group who are instructed to estimate the length of the rope in the photo to be about 6". After the individual who previously estimated it one foot listened to the group consistently estimating the rope to be about 6" long he changed his own estimate to be shorter. The experiment then switched to a group who all estimated the length to be 18". The individual was influenced to readjust his estimate to be longer.

I don't know how psychologists got one person to sit in on multiple sessions with different groups but I'm going to trust Marc on this one. The point is: as individuals we tend to trust the group, not unlike a flock of birds, or a bunch of lemmings running off a cliff, and much of the time it serves us well: but not always. One of the antidotes for dysfunctional group-think is a commitment to objective facts, analysis, and to your own judgment. Being in the minority doesn't make you wrong: being wrong makes you wrong.

So your City Council will continue with the chosen process of spending $40K at a crack for consultants to evaluate one or two potential police facility sites at a time. We'll do that because, "we just need to make a decision", and when you're in the majority that must mean you're right. Here's a link to today's Kitsap Sun article on last night's Council discussion
https://www.kitsapsun.com/story/news/local/communities/bainbridgeislander/2018/04/11/bainbridge-considering-eminent-domain-action-acquire-police-stationsite/508900002/

Bainbridge mulls eminent domain action to acquire police ...

www.kitsapsun.com

City Council also votes to get more information on the Harrison urgent care site off Madison Avenue.

From:	Kol Medina
To:	Linda Allen
Cc:	Ron Peltier
Subject:	RE: Police/Court Facility Site Selection Update
Date:	Wednesday, April 18, 2018 1:19:05 PM
Attachments:	COBI_Site_Evaluation_Matrix_5.2.17 .pdf

Hi Linda,

Thank you for writing. It's always nice to hear from you.

I have no interest in using eminent domain. Councilmember Peltier is the Councilmember who raised and pushed the idea of using eminent domain. That idea is on the table because of his strong support for it.

Last week, a majority of Council did not agree with Councilmember Peltier's suggestion that we create a citizens task force for the police facility. In his email below, he claims that his suggestion failed because the rest of the Council is not interested in using a "methodical and informed approach to selecting a new police facility." That's pretty ironic.

In fact, the very reason why a majority of Council did not agree to move forward with Councilmember Peltier's suggestion is because a methodical and informed approach is what we have been using and what has led us to the place we are at. If the options the City is looking at now fail to pan out, then at that point we will, I'm sure, go back to the drawing board and start over with another "methodical and informed approach." At that point (if it were to arrive), I would encourage Councilmember Peltier to bring forward his citizen task force suggestion again. But a majority of Council agreed that we should finish the current "methodical and informed approach" before stopping it and starting over with a different process.

And in fact, the City has gone through a good number of "methodical and informed approaches" to this police station over the years. I was talking with someone today who told me that the first study he saw done relating a new site for the police station was in 1985. That study found that the best site for the police station was on what is now the City Hall site (the idea was to co-locate them). So the City has been doing "methodical and informed approach" after "methodical and informed approach" on this since at least 1985.

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Strangely, I see that that webpage is missing one of the reports I've just referred to, so I've attached it (or a summary of it) to this email. And I will make sure it gets placed on the website.

Those are my thoughts, Linda. I hope something I've said is useful.

Thanks,
Kol

Kol Medina
Bainbridge Island Mayor and Council Member
Position 2, North Ward
kmedina@bainbridgewa.gov
206-512-7155

From: Linda Allen [mailto:foxpaw1@aol.com]
Sent: Tuesday, April 17, 2018 6:27 PM
To: Ron Peltier <rpeltier@bainbridgewa.gov>
Cc: Joe Deets <jdeets@bainbridgewa.gov>; Kol Medina <kmedina@bainbridgewa.gov>; Matthew Tirman <mtirman@bainbridgewa.gov>; mscott@bainbridgewa.gov; rasham4citycouncil@gmail.com; Sarah Blossom <sblossom@bainbridgewa.gov>
Subject: Fwd: Police/Court Facility Site Selection Update

Hey Ron. Thanks for the letter.

Just for the record, I hate "eminent domain." We wonder why we see increasing crime and devaluation of morals in our country? Could be that our government has a process by which they just go out and take whatever they want. What kind of message is sending to our youth? The city did this with the old Jiffy Mart property on Madison when they wanted to build City Hall there. They just kicked out the Jiffy Mart and took the property. Now the Police Station? Seriously. What's happened to integrity, and for that matter, could have something to do with the people trusting our city government when that process for procurement is considered. I could kinda see the need for eminent domain with a section of a proposed interstate highway. But the police station on Bainbridge Island which has been considering about 6 different locations for the past 3 or 4 years? No.

And I agree with you about simply rebuilding on the existing site, with parking below and as many stories to house the needs of the facility as indicated. There's room for everything on that site. We own the land, the location is perfect and has been perfect for a bazillion years, and I don't understand why this site is not being considered. It makes no sense to me whatsoever to place the police station near schools, and to think about taking someone's property when we already own property. Just sayin'.

Good luck with beating some sense into the heads of the other council members with this one.

Linda Allen

-----Original Message-----
From: Ron Peltier <rpeltier@bainbridgewa.gov>
Sent: Wed, Apr 11, 2018 10:25 pm
Subject: Police/Court Facility Site Selection Update

Dear Islanders,

I hope this update from City Hall finds you well.

Last night the Bainbridge City Council discussed site selection for a new police/court facility. Before us was consideration of the CHI Franciscan property next to the Baptist church, the Coultas property on New Brooklyn near the BARN, and a site selection process proposal put forth by Rasham Nassar and myself.

Our site selection process proposal, which is attached, would have focused on the use of a weighted criteria matrix to evaluate a comprehensive list of potential sites. The proposed process would have included a task force to fine tune the criteria and scoring for each site. It's a methodical process that can include unlimited criteria, each weighted according to importance. Used properly it can be an extremely useful tool for making informed decisions. It was rejected by four council members, Medina, Blossom, Tirman and Deets. I guess I was disappointed but I really not surprised.

As an elected official I'm committed to doing my best to make informed decisions, based upon facts and analysis. Call me old fashioned but I bet most of you expect the same. You think everyone would get that, but they don't. Over last two years on City Council I've been struck by just how resistant most of my colleagues are to taking a methodical and informed approach to selecting a site for a new police facility. Most surprising has been a complete unwillingness to give serious consideration to the existing site near the ferry. Is it me? Am I the problem here and just don't realize it?

That reminds me of an experiment my friend Marc Joslyn told me about. It's about a test done to evaluate the effect of groups on the judgement of individuals. It starts out with an individual being shown a picture of a piece of rope. He looks at it and estimates the length to be about one foot. Later this one person is mixed in with a group who are instructed to estimate the length of the rope in the photo to be about 6". After the individual who previously estimated it one foot listened to the group consistently estimating the rope to be about 6" long he changed his own estimate to be shorter.   The experiment then switched to a group who all estimated the length to be 18". The individual was influenced to readjust his estimate to be longer.

I don't know how psychologists got one one person to sit in on multiple sessions with different groups but I'm going to trust Marc's on this one. The point is: as individuals we tend to trust the group, not unlike a flock of birds, or a bunch of lemmings running off a cliff, and much of the time it serves us well: but not always. One of the antidotes for dysfunctional group-think is a commitment to objective facts, analysis, and to your own judgement. Being in the minority doesn't make you wrong: being wrong makes you wrong

So your City Council will continue with the chosen process of spending $40K at a crack for consultants to evaluate one or two potential police facility sites at a time. We'll do that because, "we just need to make a decision", and when you're in the majority that must mean you're right. Here's a link to today's Kitsap Sun article on last night's Council discussion:

https://www.kitsapsun.com/story/news/local/communities/bainbridge-islander/2018/04/11/bainbridge-considering-eminent-domain-action-acquire-police-station-site/508900002/

[Bainbridge mulls eminent domain action to acquire police ...](https://www.kitsapsun.com/story/news/local/communities/bainbridge-islander/2018/04/11/bainbridge-considering-eminent-domain-action-acquire-police-station-site/508900002/)

www.kitsapsun.com

City Council also votes to get more information on the Harrison urgent care site off Madison Avenue.

Best Regards,
Ron Peltier

Criteria Value:

- 4 very important
- 3 relatively more important
- 2 relatively less important
- 1 less important

Score:

- 1 evaluation criteria is not achieved
- 2 evaluation criteria is achieved less than satisfactorily
- 3 evaluation criteria is achieved satisfactorily
- 4 evaluation criteria is achieved more than satisfactorily
- x no basis for determination

	Criteria	Criteria Value	Existing Police Site		Vineyard Lane Site		Madison Site		Yaquina Site		New Brooklyn Site		249 Winslow Way Site		
			(score)	Weighted Score	(score)	Weighted Score	(score)	Weighted Score	(score)	Weighted Score	(score)	Weighted Score	(score)	Weighted Score	Notes
	General Criteria														
A	Size: permits 1-story design/future growth	4	2	8	4	16	1	4	1	4	3	12	1	4	1
B	Est. Acquisition Cost (Assessed Value)	2	4	8	3	6	4	8	4	8	4	8	2	4	8
C	Site Transferability Time frame	2	4	8	3	6	3	6	3	6	3	6	3	6	2
D	Zoning restrictions	2	4	8	4	8	1	2	2	4	4	8	4	8	3
E	Temporary Relocation expense	1	1	1	4	4	4	4	4	4	4	4	4	4	
	Location Criteria														
F	Multiple access points	4	3	12	3	12	1	4	3	12	3	12	1	4	4
G	Proximity to SR305	3	4	12	4	12	4	12	4	12	3	9	2	6	
H	Accessibility to entire island	2	3	6	4	8	3	6	3	6	4	8	3	6	5
I	Landmarking - easy to find	2	4	8	3	6	3	6	3	6	3	6	2	4	6
	Site Specific Criteria														
J	Topographic constraints	3	4	12	4	12	3	9	3	9	4	12	2	6	
K	Utility availability	3	4	12	2	6	1	3	1	3	4	12	4	12	
L	Site hazardous materials issues	3	2	6	3	9	3	9	3	9	3	9	3	9	2
M	Low impact development potential	2	1	2	3	6	1	2	1	2	1	2	1	2	7
N	Soils suitability	2	3	6	3	6	3	6	2	4	3	6	3	6	2
O	Noise and traffic impacts to neighbors	2	4	8	4	8	3	6	3	6	4	8	4	8	
P	Minimizes tree removal	3	4	12	2	6	2	6	2	6	4	12	4	12	
		Total	51	129	53	131	40	93	42	101	54	134	43	101	
			PASS		PASS		FAIL		FAIL		PASS		FAIL		
	Relative Cost of Implementation			$$$$		$$$		$$		$$		$		$$$$	

Notes:

1. Vineyard "4" as it can be support expansion and 1-story building. Scored New Brooklyn "3" as it can support a 1-story building. Scored Existing Police station "2" as it cannot support a 1-story building but offers limited potential for a future expansion.
2. Will require in depth study and testing to confirm conclusions.
3. Inadequate size coupled with zoning (Setbacks) on Madison site prevent efficient development.
4. Scored Existing Police site "3" as it allows mutilpe access points (although emergency exit to Olympic may be obstructed). Vineyard, Yaquina and New Brooklyn sites all require agreements with state or adjacent property owners to gain the needed access.
5. Judgement call. All sites are very close to either 305 or downtown. Visitor parking limited at Existing Police Station site. 249 Winslow Way separates visitor parking.
6. Existing Police station site is readily identifiable "4". Vineyard, Madison and Yaquina all have large potentially landscaped setbacks potentially obscuring building "3". New Brooklyn site dirves reverse plan (turning back to the street requiring added design cues "3". 249 Winslow results in Courts being difficult to find "2".
7. Scored Vineyard "3" as we are primarily developing portion of site that has been logged. Development may result in protecting remainder of greenfield site. 249 Winslow scored "1" as garage blocks view to sidewalk and requires connection to other properties (not owned).
8. Parcels are evaluated by using assessed value as listed by Kitsap County Tax Assessors website.

The city's new police station, as earlier envisioned on New Brooklyn Road. (Image courtesy of the city of Bainbridge Island)

Eminent domain enters the discussion on land for new Bainbridge police station

By Brian Kelly
Saturday, April 14, 2018 11:09am | NEWS

With just two less-than-perfect options for a location for a new police station, members of the Bainbridge Island City Council have been talking privately about using the city's condemnation powers to acquire land for its new public safety facility.

This week, that notion nudged its way into the public discussion of what to do next on the city's more than a decade-long quest to build a new police headquarters.

Mayor Kol Medina said Tuesday that city officials have recently explored using eminent domain to acquire a property on NE New Brooklyn Road as the site for the new station.

The city had earlier hoped to buy that land, a 1.89-acre site commonly known as the "Coultas property." That site had been chosen as the city's preferred location last August, but talks on a land purchase went sideways after the owner of the property died in March 2017. The council officially crossed the site of its list of potential locations last September.

At Tuesday's council meeting, Medina said he did not think that a majority of the council would agree to use eminent domain, however.

"In our discussions about that it seemed apparent, to me, anyway, that there might not be a majority of council members in support of using eminent domain power," Medina said.

Still, as a compromise approach, Medina said the council could authorize city staff to take a closer look at the Harrison Bainbridge Urgent Care building to see if the medical facility could be renovated in a way that it could be used as the new home for the Bainbridge police department.

The property owners of the land on NE New Brooklyn Road could also be approached and told of the city's recent discussions about their land, he said.

That approach eventually won council approval, on the slimmest of votes, a 3-2 decision.

Beforehand, however, Councilman Ron Peltier asked the council to set up a 10-member citizen task force to take over the site selection process.

The members, approved by the city council, would review a list of potential locations and use a weighted criteria scoring matrix to rank the sites.

In a four-page summary of the proposal, it noted the city's current approach was dependent on paid consultants and was "an unwieldy process that involves considerable expense at each junction."

"The city council, for its part, is not being provided with the comprehensive overview required to make an informed site selection decision. The approach to date has tended to start out with the most expensive design options This needs to be turned around, starting out with the most basic design options and adding features to fit an acceptable budget."

Councilwoman Rasham Nassar said she supported creating a task force, one that could enlist the professional expertise of people in the community.

"I'm clearly in favor of trying a different approach at this point," she said.

Nassar noted the city has spent $333,900 in consulting fees on the project since 2016.

"I don't know if that's normal," she said, adding that a more detailed look at the Harrison site would add another $40,000 in consultant costs. "I think we can do better."

Councilwoman Sarah Blossom disagreed.

"This has to move forward at some point," Blossom said. "It goes on and on and on and on. And it just needs to move forward."

Councilman Joe Deets said the sites still under location weren't perfect, but they were good enough. Council members were elected to make decisions, he added.

"I just don't want to delay any more," Deets said.

The move to have staff continue its review of the Harrison and New Brooklyn sites passed on 3-2 vote, with Medina, Blossom and Deets in favor, and Peltier and Nassar, opposed. (Councilman Matthew Tirman was absent, and the council's seventh seat remains vacant from the recent resignation of Mike Scott.)

The recent talk of obtaining land for the new police station via eminent domain isn't the first time that approach has entered conversations about the location for the new police station.

In 2014, officials had flirted with the idea of obtaining the land next to city hall, where Island Fitness is located, for a combined police station/municipal court.

Public outcry made that idea a non-starter, and council members directed city staff to focus on properties that would have a willing seller.

Response to Ethics Complaint 2020-02

To:	COBI Ethics Board
From:	Kol Medina
Date:	October 26, 2020
Subject:	Response to Ethics Complaint 2020-02 Alleging Violation of Executive Session Privilege

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The topics I address below are these:

1. Timing of My Response
2. Mootness of the Complaint
3. Substance of the Complaint

Timing of My Response

I ask that the Ethics Board accept this Response. I am submitting it within one week of when I actually received notice that the Board was reviewing a 2020-02 and was seeking a response from me.

I apologize for submitting this Response later than the deadline you had originally set for me. However, I had no knowledge that you had emailed me to ask for a Response and to give me a Response deadline. On Tuesday, October 20, I saw your email sent on Monday, October 19. I responded immediately on the 20th to tell you that I had not seen your earlier emails, which you had sent to me on September 23rd and a subsequent date. When I saw your email on October 20th, I went back through my hundreds of emails and saw the earlier emails that you had sent to me. I had not seen them before that date.

Certainly, it is my fault for not seeing your emails. However, I had no knowledge that the Ethics Board was taking up complaint 2020-02. I had received earlier emails from you and the Deputy City Attorney regarding the other complaint filed against me. When at that time I received no emails about complaint 2020-02, I assumed that the Ethics Board was going hold complaint 2020-02 until after the Board had adopted Procedures for itself. Obviously, I assumed wrongly and that fault lies with me. Had I not made that assumption, I would have scanned my emails more carefully to find emails from you. Please keep in mind that I receive hundreds of emails each week. Because of the transition happening in my life, I have simply been unable to read all of them during the last couple of months.

Regarding whether or not the Ethics Board has the ability to accept this Response, I believe the answer is that it is entirely up to the Ethics Board. There is no rule I am aware of that says that the Board may not. When it comes to soliciting and accepting responses from Respondents, this is what the Ethics Code says in Article III, Section B.5: "Upon receipt of a complaint, the Chair of the Ethics Board shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085."

From my perspective, I was not provided with a reasonable period of time. In fact, I had no period of time at all because I never saw the emails sent to me by the Chair and no one ever tried to contact me through a different medium to confirm whether or not I had actually received or seen the emails.

I ask the Ethics Board to consider revising its notice process. I submit that it is insufficient for the Board to email a Respondent and, if the Ethics Board does not receive any response from the Respondent, to simply assume that the Respondent choose to ignore the email. The Ethics Board is in many respects a court or tribunal that sits in judgment, like a judge, of the actions of Council members.

No court or tribunal in this country, that I know of, takes the position that simply sending an email to a Respondent (or defendant) is sufficient notice. Courts require notice with proof of service so that there is certainty that the Respondent actually received the notice. I ask the Ethics Board to consider adopting a procedure that requires mailed notice of a complaint and response deadline to all Respondents if the Respondent has not responded to an email. At the very least, I submit that the Ethics Board should make a phone call to the Respondent to make sure that the Respondent actually received the response notice.

Regardless of how the Ethics Board chooses to handle response notices in the future, I ask that in this current circumstance, you accept my Response and include it in your consideration of Complaint 2020-02. The is no rule preventing you from doing so. You have plenty of time to do so because you won't be considering Complaint 2020-02 until your meeting on November 16th. And I believe doing so is well within the spirit and intent of the Ethics Code. The Ethics Code is meant to put in a place a system whereby informed and diligent decisions can be made. Excluding my response because of an, in my opinion, insufficient notice procedure coupled with poor email diligence on my part, would not be in line with the spirit and intent of the Ethics Code.

This Complaint is Moot and Should be Dismissed

By the time the Ethics Board considers this complaint at its meeting on November 16th, I will no longer be a Councilmember. Therefore, this complaint is moot and should be dismissed.

This complaint is moot because there is no relief that can be provided under the Code even if, hypothetically, the Ethics Board were to forward this complaint to the Hearing Examiner ("HEX") and the HEX were to decide that I had violated our Ethics Code. If that hypothetical situation were to occur, then the HEX's decision would go to the City Council. The City Council would then need to take action under Article IV, Section B of the Ethics Code. The only option that the Council would have available at that time is taking no action. Why is that? Because the only other actions allowed to Council under Article IV, Section B are actions in regards to "a Councilmember." I will not be a Councilmember. Therefore, there is no action the Council could take against me. Therefore, the complaint is moot.

Earlier this year, Mr. Peltier, filed an ethics complaint against the former members of the Ethics Board. The HEX dismissed that complaint as moot because those persons were no longer serving on the Ethics Board. I have attached the HEX's written decision as Attachment A. I submit that the HEX's decision in that earlier situation is dispositive in regards to complaint 2020-02.

In the concluding paragraph of the HEX's decision, the HEX states this: "Our state supreme court has decided that a case is moot if effective relief can no longer be provided. The ultimate sanction for a board member found to be in violation of the code of conduct or of an ethical rule would be removal from the board." In my case, the ultimate sanctions are all sanctions that can only be made against sitting Councilmembers. Therefore, by the HEX's reasoning, this complaint is moot.

Granted, my situation is somewhat different from the situation in the complaint that the HEX dismissed as moot. In that situation, the Ethics Board members being complained against had resigned from the Ethics Board prior to the complaint being filed. The HEX, in his decision, does comment on this. Whereas, in my situation, I was on Council when the complaint was filed, but I will not be on Council when the complaint is considered. So there is a factual difference between the two situations. However, that factual difference has no bearing on the ultimate question of mootness. As the HEX states in his prior decision, a complaint is moot "if effective relief can no longer be provided." That is the dispositive point.

The HEX's reasoning for why this complaint is moot is based on logic and state court precedence. However, there is additional reasoning showing why this complaint is moot if I will not be on Council when it is heard. The additional reasoning is this: Considering a complaint against a person who is no longer serving in a City position would go beyond, and therefore violate, the purpose of the Ethics Code.

The introduction to the Ethics Code states the purpose of the Ethics Code. It clearly states that the purpose of the Ethics Code is to maintain the public's confidence and trust in the City government and that is the only purpose that it states. This is the only purpose stated for the Ethics Code. Therefore, this is the only purpose of the Ethics Code.

> "All those associated with City government, including Councilmembers and members of City Committees and Commissions, seek to earn and maintain the public's confidence in

the City's services and the public's trust in its government. To this end, the decisions and work of those associated with City government must meet the highest ethical standards. It is therefore the purpose of this program to: . . . ." [emphasis added]

Considering a complaint against someone who is no longer serving in a City position does not further the sole purpose of the Ethics Code and therefore, in my opinion, violates the purpose of the Ethics Code. The purpose of the Ethics Code is not to punish people or determine guilt in a public manner. The purpose of the Ethics Code is to "maintain the public's confidence . . . and trust in its government." The manner in which the Ethics Code does that is by putting in place a process whereby people who are in government can have their actions changed (or they can be removed) so that they are no longer taking actions that undermine the public trust in government. That is the entire and sole purpose of the Ethics Code. When a person is no longer on the Council or a committee, they are no longer in a position where they can take actions that can undermine the public trust in government. Therefore, the Ethics Code no longer applies because its purpose can not be furthered.

In other words, the sole purpose of the Ethics Code (as it states) is to correct the actions of current city representatives. The purpose is not to levy punishment.

Substance of the Complaint

Mr. Peltier's allegations that I publicly disclosed information that I could have only obtained in executive session are inaccurate.

I need to start my rebuttal of his allegation by stating that I am unable to confirm that the Council did speak in executive session about using eminent domain on one or more properties. If I were to confirm that point, then I would, in fact, be violating executive session privilege. So I will put that point aside.

What I can confirm is that Mr. Peltier spoke to me, privately, outside of executive session about using eminent domain. Mr. Peltier appears to not remember this conversation. Unfortunately, this creates a situation with diametrically opposed statements of fact. In regards to that, I will add this: Anyone who served on Council with Mr. Peltier would not be surprised by Mr. Peltier not remembering his conversation with me because Mr. Peltier regularly showed during Council meetings that he did not remember conversations that we had had on the dais, let alone in private.

Additionally, former Councilmember Blossom will attest, if asked, that Mr. Peltier also spoke to her outside of executive session about using eminent domain. It appears that he does not remember that conversation either.

Over the course of my years on Council, I had at one point or another spoken with most or possibly all Council members concerning eminent domain. These conversations usually were in a generic context, not in regards to a particular issue. Eminent domain is a powerful City power; it is something that we talk about at times.

Over the years eminent domain would come up in private conversations with Council members and we would share with each other how we feel about using that power. I can not pinpoint exactly when I spoke with different Council members about this topic, with exactly which Council members I spoke, or the context of each conversation. However, I had these conversations over the years, and my sense from all of these discussions was (and is) "that it seemed apparent" that most Council members would never choose to use eminent domain unless there was no other option (and maybe not even then). I certainly know that that is how I feel about it.

In regards to the email that I sent to a constituent in which I named Mr. Peltier as being interested in using eminent domain, I made that statement based on my private conversation with Mr. Peltier. That statement was not based on an executive session discussion.

In regards to the statement I made at the City Council meeting that was then published in the Bainbridge Review, I made that statement based on my history of conversations with Council members about using eminent domain and based on my own feelings about using eminent domain. When I said, "In our discussions about that it seemed apparent, to me, anyway, that there might not be a majority of council members in support of using the eminent domain power," I was referring to multiple discussions (plural) that I had had over the years with Council members about using eminent domain. I was not referring to the details of a discussion (singular) in executive session. To put it differently, it was apparent to me before the executive session that Mr. Peltier makes reference to that a majority of Council member would not support using eminent domain.

Therefore, I did not violate the executive session privilege and I did not violate the confidentiality provision of the Ethics Code.

But I think I should go further in the analysis. Let's take a hypothetical situation. Let's assume that Councilmember Peltier did state in executive session that he was interested in exploring the use of eminent domain to obtain a site for the police station. And let's assume that executive session was the only time I'd ever had any discussions with Mr. Peltier or any other Council member about eminent domain. In short, let's assume hypothetically that my two statements cited by Mr. Peltier were in fact based solely on statements made in executive session.

If all of that were true (and it is not), would my actions in that situation warrant a finding that I had committed a non-minor violation of the Ethics Code? I submit that the answer is "no."

It has been taught to me that the main purpose of executive session is to discuss legal advice provided by the City Attorney's office. Therefore, it follows, the main purpose of the executive session privilege (and the Ethics Code confidentiality provision) is ensure that no one involved in those executive session discussions discloses or uses legal advice provided by the City Attorney. In particular, the purpose is to make sure that City legal strategy is not disclosed to third parties because doing so could be detrimental to lawsuits that the City is or could become involved in. The purpose is also to ensure that a person does not take information obtained in executive session and use it for personal benefit. The main purpose of executive session privilege is *not* to protect comments made by Council members in executive session from disclosure; although I believe the privilege does extend to those comments.

Article III, Section B.7.d of the Ethics Code states the following:

> "If the Ethics Board, after review of the complaint and any response, determines that 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,

I submit that in this hypothetical situation, my statements would not have been a "material violation" of the Code of Ethics because my statements would have been "inadvertent or minor" and "further proceedings on the complaint would not serve the purposes of the Code of Ethics." My statements did not damage the City in any manner or in any manner divulge legal advice provided by the City Attorney. Nor did my statements in any manner benefit me personally. Therefore, even in this hypothetical situation, I submit that the complaint should be dismissed.

Finally, I submit that the Ethics Board should dismiss the complaint because it is not allowable, or certainly improper, for Mr. Peltier to have waited until he was off of Council to bring this complaint. He was on Council for 8 months following the situation that he is now complaining about.

Article II complaints are intended for members of the public to use to stop alleged wrongs being committed by those serving in City positions. Article II is not meant to be used by one Council member against another Council member. If Mr. Peltier felt that I had violated the Ethics Code while he was serving on Council with me, he should have raised the issue with the entire Council so that the Council could discuss it and decide if some action should be taken.

To be clear, all Council members know that if we feel one of us has violated the Ethics Code or taken some action that we feel is inappropriate, the preferred method of dealing with the issue is bringing it directly to the Council for discussion. As Council members, we have the power to raise these issues directly on Council. Members of the public do not have that ability; therefore, the Ethics Code exists to give them a way to raise their concerns and ensure those concerns are considered.

My opinion is that Mr. Peltier did not bring this up while he was on Council, or seek an advisory opinion about this, because he knew that the Council would not uphold his complaint (for the factual reasons I stated above) or because he assumed that the Council would determine that it was a minor violation and/or a violation that had no impact and therefore the Council would take no substantial action against me.

So Mr. Peltier waited until he got off of Council so that he could instead submit this complaint to the Ethics Board. In doing so, Mr. Peltier gets to use the Ethics Board and the

Article II complaint process to draw more public attention to his complaint and has a greater chance of doing personal injury to me. I understand that the Bainbridge Review had an article in last week's paper about this complaint. Therefore, Mr. Peltier has succeeded in what I am quite confident was one of his goals.

I believe that Mr. Peltier is angry with me because I did not try to protect him from all of the ethics complaints made against him last year. I believe he is angry with me that I was one of the City Council members who voted to reprimand him. I believe he is angry with me that a majority of Council, including myself, did not agree with his approach to the police station and instead voted to proceed with the Harrison site. I think the fact that he included so much detail about the Harrison decision in his complaint, detail that has no bearing on his complaint at all, shows what is really on his mind. In my opinion, he is using the Ethics Code, and using the Ethics Board, to try to punish me and to re-litigate the police station decision.

My comments in the last two paragraphs are not germane to the questions in front of the Ethics Board. They are superfluous to the decision the Board needs to make. However, I share these comments in hopes of elucidating for the Ethics Board how these ethics complaints can be abused and used to achieve personal agendas or try to settle personal vendettas. Additionally, I want to elucidate for the Ethics Board how these complaints can be, and this complaint certainly is, truly about "politics," not about ethics. I hope the Ethics Board will be aware of the political nature of some of these actions and not let itself or the Ethics Code be used improperly.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Kol Medina

Signed on Bainbridge Island, WA, on October 26, 2020

<u>Attachments</u>

A. Hearing Examiner Decision Dismissing Complaint as Moot

Attachment A

Hearing Examiner Decision

BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND

In the Matter of **Ron Peltier, Complainant** v. **Suzanne Keel-Eckmann, Ingrid Billies, Mardel Gale, & Brian Strully** Regarding an Ethics Complaint	)	No. HEA 2020-Ethics REVIEW OF ETHICS COMPLAINT

BACKGROUND

The Complaint

Ron Peltier filed an Ethics Complaint Form with the City Clerk on January 28, 2020, alleging violations of the Code of Conduct (Article I) by four former members of the City of Bainbridge Island Ethics Board (Ethics Board). In his complaint, Mr. Peltier specifically alleges violations of Section B, Core Values, 2. Integrity; and Section C, Ethics Principles, 1. Obligations to the Public. In response to a question on the Ethics Complaint Form asking for factual support of the allegations of ethical violations, Mr. Peltier states that the "1/27/20 letter of resignation signed by respondents" is attached as well as "additional comments."

In his comments, Mr. Peltier states that, in his opinion, the Washington State Open Public Meetings Act (OPMA), chapter 42.30 RCW, applies to the Ethics Board and that the four members named in his complaint violated OPMA by "conducting a secret meeting" to discuss issues "related to the City's Ethics Program." Mr. Peltier claims that, by violating OPMA, the four members thereby also violated Article I of the City's Code of Conduct. He states that they did this in the following ways:

> By conducting a secret meeting, the four members "failed to promote lawful policies and failed to uphold the highest standards of the community in violation of Article I, B. 2.; and that
>
> By conducting a secret meeting, the four members acted "contrary to promoting the public good and perserving the public's trust" as well as exhibiting "a lack of transparency by depriving the public of its lawful right to observe how a quorum of the Ethics Board conducts its business" in violation of Article I, C.1.

Mr. Peltier attached a copy of the letter of resignation, dated January 27, to his complaint as part of the statement of facts supporting his complaint. He alleges that the letter itself reveals that the four members of the Ethics Board met in secret to discuss the new ethics resolution recently adopted by the City Council, and agreed together to resign. He states there are no minutes of any public meeting where resignation is discussed in an open meeting. He admits, however, that such a discussion may have occurred, but it was not captured in the minutes.

Council Resolution 2019-26

The City Council adopted Resolution 2019-26 on November 26, 2019, with an effective date of February 1, 2020. The resolution, however, provides that the "Ethics Board shall not, without Council approval, consider any complaint . . . until Section 1 of this resolution takes effect" and that "Section 2 of this resolution shall take effect and be in force immediately upon passage." The Council apparently did this to allow the Ethics Board a period of transition from the old legislation to the new legislation.

The resolution provides the process by which complaints must be filed and considered by the Ethics Board. It notes that the "Code of Conduct and Ethics Progam" detailed in the resolution is intended to supplement state and federal law, and that members of City Committees must comply with state and federal laws in performance of their public duties.

Article I of the resolution establishes four Core Values and three Ethics Principles to guide conduct by City Council members and members of City Committees and Commissions. Article II establishes additional Code of Ethics rules, none of which are involved in the allegations of Mr. Peltier. Article III of the resolution provides the procedures for filing and reviewing a complaint. The complaint is to be filed with the City Clerk, alleging violations of either Article I, Article II, or the Employee Manual. Here, Mr. Peltier alleges violations of Article I. The resolution further provides that, if a complaint alleges one or more violations of Article I by the Ethics Board, the City Clerk must refer the complaint to the Hearing Examiner.

The Role of the Hearing Examiner

Under the resolution, the Hearing Examiner must make a threshold determination as to whether the complaint is reasonably credible and whether the facts asserted in the complaint, if true, would constitute a violation of the Article I Code of Conduct. If it is determined, following legal review, that the complaint lacks reasonable credibility, the Hearing Examiner must issue a written determination to the City Clerk dismissing the complaint. If it is determined by the Hearing Examiner that the facts stated, if true, would *not* constitue a violation, then the complaint must also be dismissed with no further action by the Hearing Exminer. If, however, the Hearing Examiner determines that the complaint is reasonably credible and that the facts asserted, if true, would consitute a violation of the Code of Conduct in Article I, then the Hearing Examiner must, after legal review, transmit the determination to the City Clerk who must refer the complaint to a mediator for reconciliation. *Code of Conduct and Ethics Program, pages14-15.*

REVIEW OF COMPLAINT

The complaints made by Mr. Peltier are not ones that can be considered by the Hearing Examiner under the resolution adopted by the City Council. The City's Code of Conduct and Ethics Program applies only to persons actively associated with city government, not those who have resigned or completed their terms. This is made clear (1) in the preamble to Article I, which applies only to "Councilmembers and members of City Committees and Commissions"; (2) in the introduction to Article II, which states that the Code of Ethics applies only to "individuals serving on City Committees and Commissions"; and (3) in Article III, which requires that a complaint must allege violations of the Code of Conduct or the Code of Ethics "by a Councilmember or a member of a City Committee or Commission." *Code of Conduct and Ethics Program, pages 7, 9, & 14.*

The restriction of the application of the Code of Conduct and Ethics Program to only *members* of the City Council, committees, or commissions makes sense. Otherwise, anyone at any time could allege a violation of the Code of Conduct for past behavior of one who was once a member of the Council, a committee, or a commission for behavior that is long past, where facts may be difficult to ascertain and the conduct alleged is no longer damaging to ongoing governmental operations. Such alleged violations by persons no longer a member of the council, committee or commission fall outside the scope of the Code of Conduct and Ethics Program, even if true. The Council, when adopting the Code of Conduct and Ethics Program, did not intend that allegations be made for conduct in the past by one who is no longer a member of the City Council, a commission, or a committee. Ethical considerations and a code of conduct apply to those who are currently serving, to help foster confidence in the decisions made by those currently involved in city government.

The individuals named by Mr. Peltier in his complaint resigned before the complaint was filed with the City. Complaints may only be filed when the individual named is a member of the City Council, a committee, or a commission. The individuals named in the complaint are no longer members of the Ethics Board. Therefore, the complaint must be dismissed as moot.

Moot means that the issue raised is "of little or no practical value, meaning, or relevance" so that, "in practical terms, the issue . . . is moot because the deadline has passed."[1] Washington courts have also addressed mootness. Our state supreme court has decided that a case is moot if effective relief can no longer be provided.[2] The ultimate sanction for a board member found to be in violation of the code of conduct or of an ethical rule would be removal from the board.[3]

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[1] Dictionary.com definition of "moot," as determined online on 2/12/20.

[2] *See, e.g., State v. Hunley,* 175 Wn.2d 901, 287 P.3d 584 (2012); *In re Det. of M.W.,* 185 Wn.2d 633, 374 P.3d 1123 (2016).

[3] *Code of Conduct and Ethics Program, page 22.* It is noteworthy that sanctions are to be administered by the City Council "to the Councilmember or member of a City Committee or Commission who has violated

Here, once a resignation of the board member occurs, in effect the deadline for filing a complaint has passed. Any complaint filed under the City's Code of Conduct and Ethics Program after the resignations were submitted is moot. Therefore, the complaint must be dismissed. This decision constitutes the written determination to the City Clerk and the dismissal of the complaint, as required by Resolution 2019-26.[4]

Decided this day 24th day of February 2020.

Theodore Paul Hunter

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

the Code," clearly indicating that the individual involved must be a member at the time the sanction is administered. The section on sanctions also provides that those expressed in the resolution are in addition to "any other penalty, sanction, or remedy which may be imposed or sought according to law or equity." Removal of a member from the council, committee, or commission where the member served is the ultimate sanction. If a member has already resigned, no sanction is possible because there is no effective relief that could be granted: the case is moot.

[4] In his complaint, Mr. Peltier also alleges violations of the Open Public Meeting Act, chapter 42.30 RCW, which also specifies what sanctions may apply. Those allegations and any determination of violations are best directed to the superior court, which has the authority to decide them and to assess penalties. The Hearing Examiner makes no decision on the merits of those allegations.

Subject: FW: EB 2020-02 - Article II Complaint
Date: Wednesday, September 23, 2020 at 8:01:35 PM Eastern Daylight Time
From: Jennifer Hodges
To: Kol Medina
Attachments: image001.png, 1 Article II Complaint cover page 9.pdf, 2 9.11.20 Medina Atricle II Complaint .pdf, 3 4.18.18 Medina email to L. Allen.pdf, 4 4.14.18 BI Review Article.pdf

Councilmember Medina:

Yesterday, September 22, 2020, the City Clerk forwarded to me the attached complaint alleging a violation by you of Article II of the Code of Conduct and Ethics Program.

Article III, Subsection B.1.5 of the Code of Conduct and Ethics Program states as follows:

> 5. Upon receipt of a complaint, the Chair of the Ethics Board shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085.

As acting Chair of the Ethics Board, I invite you to submit a response to this complaint by October 7, two weeks from today. If you wish to submit a response but require more than two weeks to do so, please let me know that a response will be forthcoming from you, and propose an alternate date by which the Ethics Board can expect to receive it.

For your reference, on September 21, 2020, the Ethics Board decided that, with the exception of the Chair, no member of the Ethics Board will review any Article II complaint until: 1) a response from the respondent, if forthcoming, has been provided; and 2) both the complaint and the response, if provided, can be reviewed simultaneously by the Ethics Board.

Regards,

Jennifer Hodges
Ethics Board, Acting Chair
Jennifer.hodges@cobicommittee.email

From: Christine Brown <cbrown@bainbridgewa.gov>
Date: Friday, September 11, 2020 at 3:12 PM
To: Robbie Sepler <rsepler@bainbridgewa.gov>, Joe Levan <jlevan@bainbridgewa.gov>
Cc: Morgan Smith <msmith@bainbridgewa.gov>, Ellen Schroer <eschroer@bainbridgewa.gov>
Subject: FW: Article II Ethics Complaint

From: Ron Peltier <peppermelly@gmail.com>
Sent: Friday, September 11, 2020 11:50 AM
To: City Clerk <cityclerk@bainbridgewa.gov>; Christine Brown <cbrown@bainbridgewa.gov>
Subject: Article II Ethics Complaint

Hi Christine,

This is a submission of an Article II Ethics Complaint against council member Kol Medina for breach of confidentiality. Attached to this emailed complaint are:

1. The Article II complaint form.
2. A separate page detailing my complaint.
3. A copy of an April 18, 2018 email sent by CM Medina to a member of the public.
4. An April 14, 2018 Bainbridge Review Article about CM Medina's announcement at the April 10, 2018 City Council meeting that the Council had been discussing the use of eminent domain for a police and court facility.

Thanks,
Ron Peltier

Subject: FW: EB 2020-02 - Article II Complaint
Date: Tuesday, October 13, 2020 at 3:06:32 PM Eastern Daylight Time
From: Jennifer Hodges
To: Kol Medina
CC: Robbie Sepler
Attachments: image001.png, 1 Article II Complaint cover page 9.pdf, 2 9.11.20 Medina Atricle II Complaint .pdf, 3 4.18.18 Medina email to L. Allen.pdf, 4 4.14.18 BI Review Article.pdf

Hi Kol,

Checking in with you about the Article II complaint (EB 2020-02) below (and attached).

The Ethics Board has not received a response from you, to date. Before we move forward in addressing this complaint I'd like to make sure that the lack of a response was intentional and not due to a missed communication someplace.

Thanks,

Jennifer

From: Jennifer Hodges <jennifer.hodges@cobicommittee.email>
Date: Wednesday, September 23, 2020 at 8:01 PM
To: Kol Medina <kmedina@bainbridgewa.gov>
Subject: FW: EB 2020-02 - Article II Complaint

Councilmember Medina:

Yesterday, September 22, 2020, the City Clerk forwarded to me the attached complaint alleging a violation by you of Article II of the Code of Conduct and Ethics Program.

Article III, Subsection B.1.5 of the Code of Conduct and Ethics Program states as follows:

> 5. Upon receipt of a complaint, the Chair of the Ethics Board shall provide the respondent with a reasonable period of time to submit a written response to the complaint supported by a declaration in compliance with RCW 9A.72.085.

As acting Chair of the Ethics Board, I invite you to submit a response to this complaint by October 7, two weeks from today. If you wish to submit a response but require more than two weeks to do so, please let me know that a response will be forthcoming from you, and propose an alternate date by which the Ethics Board can expect to receive it.

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Regards,

Jennifer Hodges

Ethics Board, Acting Chair
Jennifer.hodges@cobicommittee.email

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Cc: Morgan Smith <msmith@bainbridgewa.gov>, Ellen Schroer <eschroer@bainbridgewa.gov>
Subject: FW: Article II Ethics Complaint

From: Ron Peltier <peppermelly@gmail.com>
Sent: Friday, September 11, 2020 11:50 AM
To: City Clerk <cityclerk@bainbridgewa.gov>; Christine Brown <cbrown@bainbridgewa.gov>
Subject: Article II Ethics Complaint

CAUTION: This email originated from outside the City of Bainbridge Island organization. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Hi Christine,

This is a submission of an Article II Ethics Complaint against council member Kol Medina for breach of confidentiality. Attached to this emailed complaint are:

1. The Article II complaint form.
2. A separate page detailing my complaint.
3. A copy of an April 18, 2018 email sent by CM Medina to a member of the public.
4. An April 14, 2018 Bainbridge Review Article about CM Medina's announcement at the April 10, 2018 City Council meeting that the Council had been discussing the use of eminent domain for a police and court facility.

Thanks,
Ron Peltier

Article II (Code of Ethics)
Ethics Complaint Form

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Ethics (Article II) by a Councilmember or a member of a City Committee or Commission should complete this form and submit it, along with any supporting documents, to the City Clerk at cityclerk@bainbridgewa.gov.

II. Your Contact Information:

Name: Attorney Wyatt Golding (on behalf of unnamed client)

Address: 2101 Fourth Ave, Suite 1230
Seattle, WA 98121

III. Article II Complaint:

A. Please provide the name of the Councilmember or the member of a City Committee or Commission who is the subject of your complaint (this individual is referred to as the "Respondent"):

Councilmember Kolby Medina

B. Please identify the section(s) or subsection(s) of the Code of Ethics (Article II) that you believe were violated by the Respondent:

Article II, Sections A.1, D.1, and D.4.

C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Ethics (Article II) indicated above. If necessary, please attach additional pages. If other records exist that you believe support your allegation (e.g., emails or other documents), please attach them to this form as well.

The facts and analysis are set forth in an attached letter.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing, including any additional pages or records attached by me, are true and correct.

Date: 9/15/2020 Place: Seattle, WA

Signature

ZIONTZ CHESTNUT
ATTORNEYS AT LAW

RICHARD M. BERLEY
MARC D. SLONIM
BRIAN W. CHESTNUT
BRIAN C. GRUBER
BETH A. BALDWIN
WYATT F. GOLDING
ANNA E. BRADY

FOURTH AND BLANCHARD BUILDING
2101 FOURTH AVENUE, SUITE 1230
SEATTLE, WASHINGTON 98121-2331
TELEPHONE: (206) 448-1230
FAX: (206) 448-0962
WWW.ZIONTZCHESTNUT.COM

September 15, 2020

Via Email

To:	City Clerk, City of Bainbridge
From:	Attorney Wyatt Golding, on behalf of a client who wishes to remain unnamed for fear of retribution
RE:	Article II ethics complaint concerning Councilmember Kolby Medina

I. INTRODUCTION

This ethics complaint concerns Councilmember Kolby Medina's dual role as President and CEO of the Kitsap Community Foundation and as a Bainbridge City Councilmember. The alleged ethics violations arise from the undisclosed conflict of interest created by Mr. Medina's acceptance of thousands of dollars of donations from individuals and entities in his role at the Kitsap Community Foundation, and subsequent actions in his role as a Councilmember to award substantial public funds to those entities. The donations to the Foundation benefitted Mr. Medina by enhancing his performance as President and CEO, and by funding the organization that pays a salary to Mr. Medina. Specifically, Mr. Medina in his role as President and CEO accepted substantial donations to the Foundation from leaders of the Olympic Property Group and the Harrison Medical Center, and then in his role as Councilmember voted to award a $796,000 contract to Olympic Property Group and to purchase the Harrison Medical Center for approximately $9 million. The purchase of the Harrison Medical Center was for a price at least $1.3 million more than each of the three appraisals prepared for the City.

The complaint alleges that Mr. Medina serving in a dual role in which he benefits from donations in a private capacity, and then confers benefit to the donors in a public capacity, presents a conflict of interest that undermines faith in fair and open local government.

Mr. Medina failed to disclose these conflicts of interest. Related to his dual roles with competing interests, Mr. Medina appears to have violated the Ethics Program's prohibition on gifts, Art. II, Sect. A.1, prohibition on disclosure of confidential information obtained in executive session, Art. II, Sect. C, prohibition on undisclosed conflicts of interest, Art. II, Sect. D.1, and the requirement for full financial disclosure consistent with State law, Art. II., D.4. The complaint does not allege that Mr. Medina, the Foundation, or the Foundation's donors engaged in corruption. The complaint does not opine on the intent of any party in making donations, receiving donations, or taking official action.

The complainant requests that, pursuant to Art. III.B.7.f., the Ethics Board review this complaint, determine that the facts are credible and demonstrate a violation of the Ethics Program, and present these findings to the City Clerk. The Clerk then should refer the matter to the Hearing Examiner for consideration. The complaint is filed by an attorney on behalf of a client who wishes to remain unnamed, based on reasonable fear of retribution by Mr. Medina, who is a powerful local official and private citizen that has already threatened my client as describe herein.

II. FACTUAL BACKGROUND

The facts set forth below provide the basis for this complaint. Because the review is based largely on a written record, there may be additional relevant facts or statements that are helpful to the Ethics Board's review. We welcome clarifications from Mr. Medina or other involved individuals. We provide the main materials as attached exhibits. Further referenced materials are available upon request.

Mr. Medina is a current Bainbridge City Councilmember and former mayor. He is also the President and CEO of the Kitsap Community Foundation (Foundation), a non-profit organization that fundraises and provides funding to other local non-profits.

The Foundation's website and tax documents provide information regarding donors and salaries. The Foundation features tiers of donors, as well as gifts from anonymous donors. Tax documents demonstrate that in 2018, Mr. Medina drew a salary of approximately $90,051 with an additional approximately $8,870 in other compensation. He was one of two salaried employees listed. The tax form is provided as Exhibit A.

The mission of the Foundation includes four main tenants, one of which is "[b]uilding a large endowment and making grants to our community's nonprofits."[1] The Foundation's website explains that "KCF prides itself in its donor/investor program, providing a high degree of personalized customer service."[2] As the President and CEO, it is fair to say that part of Mr. Medina's job is to develop donor relationships, encourage future donations, and grow the Foundation's endowment. Relevant webpages are provided as Exhibit B.

Two examples inform this complaint: a contract awarded to the Olympic Property Group, and a real estate contract with CHI Franciscan (now St. Michael's) for purchase of the Harrison Medical Center (HMC).

Olympic Property Group

The Kitsap Community Foundation's web page indicates that Jon Rose, President of the Olympic Property Group, makes substantial donations to the Kitsap Community Foundation and is a Cornerstone Society donor, "the (financial) base on which all of the Foundation's operations are built." Status as a Cornerstone Society donor requires a gift of at least $1,000 annually, with the total amount not disclosed.[3] Mr. Rose is also a Foundation Ambassador, which means that he serves as a public advocate for the Foundation and in that way is a professional asset to Mr. Medina. Mr. Rose is described as part of "a dedicated group of ambassadors for our Foundation that are willing to share with others how we have served their desire to improve our community

[1] https://www.kitsapfoundation.org/about
[2] *Id.*
[3] https://www.kitsapfoundation.org/cornerstone

and leave a legacy of generosity."[4]

As a member of the Bainbridge Island City Council, Mr. Medina voted to award an up to $796,000 contract to the Olympic Property Group. The contract was awarded at a June 12, 2018 Council meeting and was signed by Jon Rose on July 13, 2018.[5] The purpose of the contract is to entitle through preliminary plat a 14-acre parcel located in the City of Bainbridge Island and owned by the City of Bainbridge Island. The contract awarded to Mr. Rose appears favorable towards Olympic Property Group, including a "project profit" fee of 18%, adding $121,515 to project costs. The contract is provided as Exhibit C.

Mr. Medina advocated for the award of the contract to Mr. Rose and Olympic Property Group in his role as a Councilman and voted in favor of awarding the contract. To the best of my knowledge, he did not disclose to the Council or public his relationship with Mr. Rose, the Olympic Property Group, or Mr. Rose's donations to the Foundation, and did not recuse himself from proceedings relating to the Olympic Property Group contract.

Harrison Medical Center

CHI Franciscan operated the former Harrison Medical Center on Bainbridge Island. In recent years, HMC leadership made significant donations to the Foundation. The President and two members of the Board of Directors of HMC are major donors to the Foundation. Those include David Shultz, former President, Harrison Medical Center, December 2014-November 2019; Chris Rieland, on the Board of Directors of HMC and Foundation Cornerstone Society Member; Joe Roszak, on the Board of Directors of HMC and Foundation Cornerstone Society Member. *See* Exh. B. In addition, at least three doctors at HMC were major donors.

The Harrison Medical Center was also one of several sites under consideration by the Bainbridge City Council for a new police station for Bainbridge Island. Other sites that have been under consideration include construction at three parcels, generally known as the Visconsi proposal, the Yaquina site, and the New Brooklyn Road/Coultas family site, as well as co-location with the fire department.

While the process has been complex, the relevant timeline is as follows:

- In November of 2017, the City was presented with an offer from CHI Franciscan to consider the HMC Building as a potential site for the police and court facility. Converting the building into a police and court facility was understood to require significant renovations.

- At least four appraisals were prepared for the site.[6]

[4] https://www.kitsapfoundation.org/ambassadors
[5] City Council agendas, minutes, and records are available here: https://www.bainbridgewa.gov/1101/City-Council-Agendas.
[6] The appraisals are public records of the City and are available upon request.

- On June 14, 2018, Colliers appraised the property for the City at $7,520,000, based on "as is value," which constituted continued use as a medical center (without regard to retrofitting).
  - On August 30, 2018, S&H Appraisal appraised the property for CHI Real Estate Services (affiliated with the seller) for $9,700,000
  - On November 18, 2018, Colliers appraised the property for the City at $7,600,000, again based on "as is value."
  - On January 10, 2019, Kidder Mathews appraised the property for the City "as is" for $7,040,000, with a higher valuation if a lease-back was provided.

- The appraisals were the source of criticism because the specific scope of work for the assignments was, "as requested by the client, to provide this value without consideration to future (retrofitting) use" among other issues.[7] [8]

- On March 26, 2019, the City Council voted to authorize the City Manager to execute the purchase and sale agreement for the HMC Building for the purchase price of $8,975,000, despite the City's January 2019 appraisal placing the value at $7,040,000. The motion passed in a split 4-3 vote, with Council member Medina voting in favor.

- The amount paid was far greater than the "as is" appraisals provided to the City.

- Ultimately, Mr. Medina was the deciding vote in favor of HMC acquisition in a 4-3 decision. In the process leading up to this $9 million purchase decision, Mr. Medina appeared to take several actions that ultimately helped secure the approval of the City's acquisition of HMC.

- According to Bradley Goldberg, a representative of the seller of the Visconsi property, Mr. Medina personally called him and informed him that even if the Visconsi site was a suitable location and made the most economic sense that the City Council would not look at his property as a candidate site based on the history of the property. Mr. Goldberg relayed this information in a February 18, 2019 Memo to City Manager, Morgan Smith, and City Council Members. This memo is provided as Exhibit D.

- Mr. Medina informed a reporter from the Kitsap Sun that he favored the HMC site and that the Council was considering using eminent domain to acquire the competitor New Brooklyn site.[9] In so doing he appeared to have divulged confidential discussion from

---

[7] Had the property been appraised with consideration for the City's intended use, the appraised value would likely have been lower. For example, the average value of office space on Bainbridge Island in 2018 was $227/sf, suggesting a value of $4.17 million for the 18,385 sf HMC building. Using the 5-year average for office space ($189/sf), provides an estimated value of $3.47 million. Supporting these estimates, the 20,981 sf Bainbridge Building on Ericksen Avenue in downtown Winslow sold for $162/sf ($3.4 million) in 2018. (see Kidder Mathews 2019 appraisal of the HMC building, p. 34, and Colliers 2018 HMC Appraisal, p. 65 and their Letter of Transmittal).

[8] *See* https://www.bainbridgereview.com/letters/council-should-stop-project-immediately-letter-to-the-editor/

[9] *See* https://www.kitsapsun.com/story/news/local/communities/bainbridge-islander/2018/04/11/bainbridge-considering-eminent-domain-action-acquire-police-station-site/508900002/

executive session. This news generated predictable public outcry and effectively ended consideration of the New Brooklyn site. These articles are provided as Exhibit E.

- Mr. Medina repeatedly presented, promoted, and voted for the various procedural steps necessary to research and develop the HMC acquisition.

- Mr. Medina publicly criticized the location and history of the competing Visconsi site, based on factors such as its location next to a Walgreens and a bank.

Given these actions, and his ultimate deciding vote, Mr. Medina's involvement was a deciding factor in the decision to pay $8,975,000 of public money to CHI Franciscan for HMC. It appears this decision resulted in the potentially unnecessary expenditure of at least $1.3 million in public funds.

Records I have reviewed do not identify any instance in which Mr. Medina identified a potential conflict of interest relating to his receipt of substantial donations from leadership at HMC. These donations overlapped with the process leading up to acquisition of HMC. Mr. Medina did not recuse himself from the authorizing vote or various procedural steps leading up that vote.

At the same time, we identified instances where Medina recognized more minor conflicts of interests related to his dual role as Foundation CEO and Council member and recused himself. Such examples include recusing himself from a discussion regarding a contract between Kitsap Strong and the City of Bainbridge Island because the Foundation financially supports Kitsap Strong, disclosing his Foundation's relationship with the Kitsap Humane Society for similar reasons, and then again at another meeting disclosing his Foundation's relationship with Kitsap Strong when a City Resolution was up for debate that simply mentioned Kitsap Strong. Mr. Medina also twice recused himself from a debate on a fireworks ban because he was born on the 4th of July. These disclosures and recusals indicate that Mr. Medina was aware of the potential for conflicts between his dual roles as CEO and Councilmember, yet did not disclose more substantial conflicts when it came to approving major contracts and real estate transactions.

Anonymous Donations

The Kitsap Community Foundation receives at least one anonymous and substantial "Cornerstone" donation.[10] Exh. B.

Procedural History

On March 2, 2020 I transmitted a letter to Mr. Medina raising concerns relating to his dual roles and the Olympic Property Group, attached as Exhibit F. I suggested that these and similar actions raised the appearance of conflict of interest and raise concerns of violation of the Bainbridge City Council's Code of Ethics Program as well as State law governing conflicts of interest and anonymous donations to elected officials. When I did not receive a response, I shared this letter with the Council and the City Attorney.

[10] https://www.kitsapfoundation.org/cornerstone

In a March 14, 2020 email to me, attached as Exhibit G, Mr. Medina stated that "lurking behind your carefully chosen words is an accusation of corruption involving myself, a leading nonprofit organization in our community (and by implication the 17-member Board of that organization), an individual, and a deep-pocketed for-profit company in our community." Mr. Medina further threatened that

> if your client is making accusations in our community of corruption involving these parties, it is likely that your client will be sued for slander. Any such accusations of corruption are completely baseless, which means those accusations are slander. I, as an elected public official, do not have the same protections against slander as a normal person or entity. But all of the other entities and people that you and your client are pulling into this do have protections against slander. I encourage you to explain this to your client.

This threatening response from Mr. Medina's City of Bainbridge email account confirms the concern that there is a close relationship between Councilmember Medina, CEO Medina and a "deep-pocketed" company that funds CEO Medina's organization, such that ethics complaints against Councilmember Medina result in threats of recrimination from Councilmember Medina on behalf of a company funding CEO Medina's organization.

This speaks to the essence of our concern: that there is conflict of interest in serving personal and public objectives relating to the same matters, and that there is at least the appearance that Councilmember Medina may be serving CEO Medina's interests and the interests of companies and individuals that fund CEO Medina's organization when acting in an official capacity.

III. ETHICS PROGRAM VIOLATIONS

As an elected official Mr. Medina can and should have policy preferences and positions, and advocate for those positions. However, Mr. Medina's actions raise legitimate concern over a conflict of interest, in which Mr. Medina faces competing obligations between his private duty to serve donor's interests and in his public duty to serve the interests of Bainbridge Island residents.

Bainbridge has a strong Code of Conduct and Ethics Program, which demands high standards of transparency from its elected officials. The introduction to the City of Bainbridge's Code of Conduct and Ethics Program states:

> All those associated with City government, including Councilmembers and members of City Committees and Commissions, seek to earn and maintain the public's confidence in the City's services and the public's trust in its government. To this end, the decisions and work of those associated with City government must meet the highest ethical standards.

These are laudable goals. In the spirit of achieving the Code's goals, this complaint seeks a clear statement from the Ethics Board and Hearings Examiner regarding conflicts of interest. Financial relationships between members of the community and elected officials require the highest level of attention because they raise reasonable concern that an elected official may not be acting in the best interests of the City and its people.

A. Mr. Medina's related public and private positions create an undisclosed conflict of interest.

The core concern presented by this Complaint is undisclosed conflict of interest. The Ethics Program, Article 2, Subpart D.1 requires in relevant part that:

> an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if they, or a member of their immediate family:
>
> a. Has any substantial direct or indirect contractual employment related to the matter;
>
> b. Has other financial or private interest in that matter (which includes serving on a Board of Directors for any organization)…

The crux of the provision is that the public must be assured that their elected officials have only the public's interests at heart. When an elected official receives private financial benefit that relates to official conduct, it calls into question whether the official is serving the private or public interest. The repeated use of the word "any," coupled with the broader intent of the Ethics Program as stated in the introduction, mandates a liberal construction of the code that favors disclosure of potential conflicts.

Here, Mr. Medina's "official action[s]" as referenced in Article II, Sect. D.1 include the measures taken as a City Councilmember related to the Olympic Property Group and Harrison Medical Center. The "matters" before the City Council were expenditures to Olympic Property Group and Harrison Medical Center.

The dispositive question is whether Mr. Medina's role as President and CEO of the Foundation constitutes a "financial or private interest," related to the award of public funds to the Olympic Property Group contract and the Harrison Medical Center purchase. Article II, Sect. D.1.b. In both instances, the "financial or private interest" is Mr. Medina's potential interest in securing donations that help him perform his job as President and CEO of the Foundation. This relationship is a close enough nexus to constitute a "financial or private interest."

A non-profit organization is fueled by donations and serves its donors. The Foundation explicitly views donors as investors and customers that Mr. Medina serves as a core tenant of the Foundation's mission. Mr. Medina therefore has a strong "financial or private interest" in cultivating favor of donors, particularly significant donors, such as Mr. Rose and leaders of HMC. Obtaining donations furthers Mr. Medina's private job performance and at least indirectly allows for his private compensation. The nexus between Mr. Medina's private and public interests is particularly clear with respect to Mr. Rose, who serves as an ambassador to Mr. Medina's Foundation. This means that Mr. Rose is actively assisting Mr. Medina in performing his private duties and is of great professional value to Mr. Medina, while at the same time presenting official business to Mr. Medina in his public role.

The donations are related to the matters presented to the City Council, because the matters specifically concern payment of funds to the organizations, and the donations come from key leaders in each organization. This is where the potential for conflict of interest is highest—where the City Council takes a specific action that awards money to a specific private interest. In practical terms, the relationship means that on one day, a donor may meet with Mr. Medina in his private capacity and make a large financial donation (with potential for more donations if the donor is satisfied), and on a subsequent day Mr. Medina in his public role may make a decision that likewise provides that donor with financial benefit. This reciprocal exchange of money presents a clear conflict of interest. That conflict of interest exists even if Mr. Medina is able to compartmentalize his two jobs and does not curry any favor to the donor in his public role.

B. Donations to the Foundation from entities doing specific business before the Council constitute prohibited gifts.

In a related provision to conflicts of interest, the Ethics Program forbids acceptance of gifts that relate to official business. Article II, Sect. A.1 provides that "no Councilmember or member of a City Committee or Commission, or any member of their immediate families, shall, **directly or indirectly**, accept any gift (as defined below) for **a matter connected with or related to** their services or duties with the City of Bainbridge Island." (emphasis added).

This provision clarifies that even an indirect connection between private and public matters is sufficient to constitute a conflict of interest that must be disclosed. Donations of money are gifts, not subject to any of the exceptions provided in the Ethics Program. The gifts provided to the Foundation are at least "indirectly" beneficial to Mr. Medina, and the contracts to Olympic Property Group and Harrison Medical Center are "connected with or related to" donations from leaders of those organizations.

While this Complaint only alleges violations of the City's Ethics Program, related State law (upon which Article II of the City's Ethics Program is based) provides instructive guidance on the key question of the directness of connection required to constitute a conflict of interest. This guidance pertains to both the conflict or interest and prohibited gifts provisions of the Ethics Program. Because the Ethics Program was passed in addition to State law and seeks to impose the "highest ethical standards," it is reasonable to assume that the intent of the Program is to impose standards that are some degree more stringent than State law.

Relevant case law concerning conflict of interest with respect to public contracts establishes that the existence of relatively indirect connection between personal benefit and public acts can constitute a conflict of interest. The inquiry focuses on the presence of the likely conflict of interest. Again, the question is not whether there is actual quid pro quo. RCW 42.30.030 "is directed at self-dealing where a public official would otherwise have the discretion to use his public office to favor his private interests over the interests of others." *Seattle v. State*, 100 Wash. 2d 232, 246, 668 P.2d 1266, 1273 (1983).

Importantly, subjective intent to personally benefit from public office is not required—rather, the existence of an interest and the opportunity to engage in self-dealing is sufficient. "For more than a century the Washington Legislature has prohibited contracts that may interfere with a public official's fiduciary duty to the public." *City of Raymond v. Runyon*, 93 Wash. App. 127, 134, 967 P.2d 19, 23 (1998) (emphasis added). In discussing the history of RCW 43.30.030, the Court stated that "[p]ublic policy demands that public officials should serve unencumbered by private concerns. 'It is that principle which requires the trustee to always occupy a position that shall be free from the dictates of any interest that may conflict with the obligations of his trust.'" *Id.* at 135 n.6 (quoting *City of Northport v. Northport Town Site Co.*, 27 Wash. 543, 549, 68 P. 204 (1902)). As with the Bainbridge Code of Ethics, the core principle is that a public servant should not have conflicting loyalties between two organizations, particularly with regards to competing public and personal fiduciary interests.

Two very similar cases, taking place nearly a century apart, illustrate that indirect benefit is sufficient to implicate Washington's laws against conflict of interest and self-dealing. In *Shaw & Hodgins v. Waldron*, 55 Wash. 271, 104 P. 272 (1909), and *City of Raymond v. Runyon*, 93 Wash. App. 127, the official took part in a decision to award a contract in his role as a public official, and sold the contractor materials in his role as a private individual. In *Shaw* the mayor owned a lumberyard which sold lumber to a sidewalk contractor, in *City of Raymond* the official owned a gravel quarry which sold materials to a sewer contractor. The officials did not have intent to be corrupt, went to efforts to avoid conflicts of interest, and there was no evidence that they placed their vote to receive private benefit. In both cases, the official did not make specific arrangements to provide the materials for the contractor. Regardless, the courts determined that the mere presence of an interest was adequate to require voiding the contracts. All that was required was that, as a matter of fact, the officials had a relationship of personal benefit with the contractor and resulting conflict of interest which could call into question the ability to fulfill the fiduciary obligation to the public.

Mr. Medina's relationship with Olympic Property Group President Jon Rose, and HMC leaders appears to meet the standard established in *Shaw* and *City of Raymond*. Mr. Rose and CHI Franciscan are the contracting party with the City, like the sidewalk contractor in *Shaw* and the sewer contractor in *City of Raymond*. Mr. Rose and the HMC leaders provided Mr. Medina with substantial payment and benefit in his private capacity as CEO and President of the Kitsap Community Foundation, which is akin to the private roles of lumberyard owner and quarry owner. Indeed, in some ways the relationship between a non-profit executive and its donors is more concerning than that between a business person and a customer. Compared to a set fee for service in a business transaction, the relationship between a non-profit and its donors is more ongoing and open-ended, and there is at least a potential expectation that providing benefit to donors as an elected official would result in future, additional donations to the non-profit.

Though the State's "appearance of fairness" doctrine doesn't apply directly to local government decisions that are not quasi-judicial, the doctrine serves similar policy goals as the Ethics Program and is therefore also instructive. The seminal case *Save a Valuable Env't (SAVE) v. Bothell*, 89 Wash. 2d 862, 576 P.2d 401 (1978), involved very similar facts. There, a Council member was also the Executive Director of the local Chamber of Commerce and voted in favor of a rezone that was supported by the Chamber of Commerce. The Court found these "dual roles" troubling and in violation of State law, because the director of an organization has an inherent interest in securing support of its members:

> In *Narrowsview Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 420, 526 P.2d 897 (1974) we held that participation of a planning commission member whose employer has an interest in the outcome is a violation of the appearance of fairness which vitiates the validity of the zoning ordinance. *See also Chicago, M., St. P. & P.R.R. v. State Human Rights Comm'n*, 87 Wn.2d 802, 557 P.2d 307 (1976). The

> dual roles of Ms. Dawson as commission member and paid director of the Chamber fall squarely within the rule of that case. The Chamber voted to support the rezone; its members stood to gain financially from it. We do not suggest that Ms. Dawson's vote was influenced by the official Chamber position on the rezone. Her position as employee of the Chamber, though, establishes an interest which might have substantially influenced her decision. This potential is sufficient to negate the appearance of impartiality which is crucial to the proper conduct of planning commission proceedings.

SAVE, 89 Wash. 2d at 872-73. Similarly, Mr. Medina's role as paid CEO of the Foundation and as a Bainbridge City Councilmember raises at least the appearance of an improper connection that risks public faith in transparent and objective governance.

In sum, Mr. Medina's organization receives financial and other assistance from Olympic Property Group and Harrison Medical Center leadership, and this assistance is of private financial benefit to Mr. Medina. The decision to spend public funds for these specific entities constitutes a related matter. As such, the acceptance of donations from Olympic Property Group and Harrison Medical Center leaders constitutes a conflict of interest that must be disclosed and impermissible gifts.

C. Mr. Medina's disclosure of confidential information related to the selection of a site for the new police station violates the Ethics Program.

An additional, related ethics concern is raised by the events surrounding the Harrison Medical Center purchase. Ethics Program Article II, Section C states that:

> Except as required by law, a Councilmember, former Councilmember, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential, or propriety information obtained in executive session or otherwise in the course of their duties as a result of their position.

Mr. Medina appears to have disclosed to the Kitsap Sun that the City Council discussed use of eminent domain with respect to a site considered in competition with the HMC purchase.

As reported in the Sun on April 11, 2018,

> The city is mulling eminent domain action – or the threat of it – to acquire a site on New Brooklyn Road for its new police-municipal court facility while it moves forward with further analysis of the Harrison urgent care clinic site it has been considering in recent weeks… Medina said he favored the Harrison site and didn't want to use eminent domain, but said that some council members are interested in the latter option, which led to the compromise vote for both options.

A May 18, 2020 email from former Councilmember Ron Peltier to the City Council details his assertion that Mr. Medina disclosed his otherwise secret comments to the public. Mr. Medina's disclosure of the eminent domain consideration, as well as the views of other council members discussed in confidence, sparked public opposition to the New Brooklyn site and violated Ethics Program Article II, Sect. C.

D. Mr. Medina's acceptance of anonymous donations raises concerns regarding the potential for conflicts of interest.

Ethics Program Article II, Section D.4 requires that "[a]ll Councilmembers are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure."

The Washington Fair Campaign Practices Act, Chapter 42.17A RCW, requires elected officials such as Mr. Medina to submit an annual statement of financial affairs. The Act further states that "[n]o payment shall be made to any person required to report under RCW 42.17A.700 and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment." RCW 42.17A.715.

The Foundation receives at least one substantial anonymous donation. My review of Mr. Medina's most recent financial statement indicates that he has not revealed the identity of anonymous donors to the Foundation. The lack of disclosure raises the prospect that Mr. Medina or others could accept substantial anonymous donations in a private capacity that create conflicts of interest in a public capacity. This is not a priority concern with respect to Mr. Medina's ethical issues, but should be clarified by the Ethics Board because there is potential for unlimited anonymous donations to officials.

IV. CONCLUSION

Mr. Medina serves two interests that at times compete with each other: it is in his private interest to solicit funds from and maintain good relations with Foundation donors, and he must also represent the fiduciary interests of the citizens of the City of Bainbridge Island. In many instances these dual roles may be entirely compatible. However, these dual interests conflict when the City Council makes specific decisions to award public funds to private entities which also provide substantial donations to Mr. Medina's foundation. This appears to be a direct and substantial conflict of interest that Mr. Medina has failed to disclose, with significant financial implications to the City and people of Bainbridge Island.

It is important to note that Mr. Medina is a sophisticated individual and it is fair to hold him to high standards. He has been Mayor and a Councilmember, and showed familiarity with the ethical program with past disclosures of relatively minor potential conflicts. As a practicing attorney, he faces heightened duties both in his role as a City Councilmember and as an officer of the Foundation. Washington Rules of Professional Conduct, Title 8, "Maintaining the Integrity of the Profession," states that:

> Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

These heightened duties further weigh in favor of a precautionary approach to avoid conflicts of interest created by Mr. Medina's dual fiduciary roles.

It is also important to note the significance of the events raised—the issues presented in the complaint represent some of the most major business to have come before the Council. Throughout 2018 and 2019 the City Council held numerous meetings where they discussed either the Harrison Medical Center purchase or the Olympic Property Group contract. At each of these meetings, council members were asked to disclose any conflicts of interest in regard to any subject matters on the agenda. The purchase of the Harrison Medical Center building was one of the largest financial transactions by the City in recent memory. Mr. Medina not only failed to recuse himself from the discussions, but encouraged the purchase of the building and actively dissuaded the council from consideration of potentially less costly and more suitable locations.

To conclude, in this complaint we have documented what we believe is a pattern of serious ethical concerns related to substantial expenditure of public funds. This is precisely the sort of issue that the Ethics Board and complaint process exists to address. It is in the public interest for the Ethics Board undertake a thorough evaluation, determine that the Ethics Program has been violated, and to set forth a clear explanation of how to navigate these conflicts of interest. These determinations then may be presented to the City Clerk, to provide to the Hearing Examiner and ultimately to the City Council.

Sincerely,

ZIONTZ CHESTNUT

Wyatt Golding

EXHIBIT A

EXTENDED TO AUGUST 17, 2020

Form **990** Department of the Treasury Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047 **2018** Open to Public Inspection

A For the 2018 calendar year, or tax year beginning OCT 1, 2018 and ending SEP 30, 2019

B Check if applicable: Address change / Name change / Initial return / Final return/terminated / Amended return / Application pending

C Name of organization: KITSAP COMMUNITY FOUNDATION

Doing business as

Number and street (or P.O. box if mail is not delivered to street address): PO BOX 3670 Room/suite

City or town, state or province, country, and ZIP or foreign postal code: SILVERDALE, WA 98383

D Employer identification number: 94-3205217

E Telephone number: (360) 698-3622

G Gross receipts $ 2,768,165.

F Name and address of principal officer: KOL MEDINA 9657 LEVIN ROAD NORTHWEST, SILVERDALE, WA 9

H(a) Is this a group return for subordinates? Yes [ ] No [X]

H(b) Are all subordinates included? Yes [ ] No [ ] If "No," attach a list. (see instructions)

H(c) Group exemption number ▶

I Tax-exempt status: [X] 501(c)(3) [ ] 501(c) ( ) ◀ (insert no.) [ ] 4947(a)(1) or [ ] 527

J Website: ▶ HTTP://WWW.KITSAPFOUNDATION.ORG/

K Form of organization: [X] Corporation [ ] Trust [ ] Association [ ] Other ▶

L Year of formation: 1993 **M** State of legal domicile: WA

Part I Summary

Activities & Governance

1 Briefly describe the organization's mission or most significant activities: TO SUPPORT AND ASSIST DONORS AND OTHER 501(C)(3) ORGANIZATIONS AND THEREBY GROW PHILANTHROPY IN OUR

2 Check this box ▶ [ ] if the organization discontinued its operations or disposed of more than 25% of its net assets.

3	Number of voting members of the governing body (Part VI, line 1a)	3	16
4	Number of independent voting members of the governing body (Part VI, line 1b)	4	16
5	Total number of individuals employed in calendar year 2018 (Part V, line 2a)	5	8
6	Total number of volunteers (estimate if necessary)	6	62
7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0.
b	Net unrelated business taxable income from Form 990-T, line 38	7b	0.

			Prior Year	Current Year
Revenue	8	Contributions and grants (Part VIII, line 1h)	1,898,514.	2,068,780.
	9	Program service revenue (Part VIII, line 2g)	69,096.	165,319.
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	212,215.	506,552.
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	-5,953.	-21,520.
	12	Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	2,173,872.	2,719,131.
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1-3)	1,297,221.	948,496.
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0.	0.
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	405,693.	447,425.
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0.	0.
	b	Total fundraising expenses (Part IX, column (D), line 25) ▶ 105,721.		
	17	Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	387,737.	512,722.
	18	Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	2,090,651.	1,908,643.
	19	Revenue less expenses. Subtract line 18 from line 12	83,221.	810,488.

			Beginning of Current Year	End of Year
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	12,063,076.	12,492,581.
	21	Total liabilities (Part X, line 26)	2,364,582.	2,439,824.
	22	Net assets or fund balances. Subtract line 21 from line 20	9,698,494.	10,052,757.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

▶ Signature of officer — Date

▶ DAVE SCHUREMAN, TREASURER
Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [ ] if self-employed	PTIN
TERRY D SODDERS CPA				P00003151

Firm's name ▶ AIKEN & SANDERS INC PS — Firm's EIN ▶ 91-0870697

Firm's address ▶ 324 S MAIN STREET UNIT A MONTESANO, WA 98563-4502 — Phone no. 360-533-3370

May the IRS discuss this return with the preparer shown above? (see instructions) [ ] Yes [ ] No

SEE SCHEDULE O FOR ORGANIZATION MISSION STATEMENT CONTINUATION

Part III **Statement of Program Service Accomplishments**

Check if Schedule O contains a response or note to any line in this Part III ☐

1 Briefly describe the organization's mission:

TO IMPROVE KITSAP COUNTY BY CONNECTING PEOPLE WHO CARE WITH CAUSES THAT MATTER.

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? ☐ Yes ☒ No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? ☐ Yes ☒ No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses $ 1,712,302. including grants of $ 948,496.) (Revenue $ 166,852.)

PROVIDE LEADERSHIP TO MOVE THE COMMUNITY TOWARDS SOLUTIONS TO COMPLEX PROBLEMS, SUCH AS OUR KITSAP STRONG PROGRAM THAT IS AIMED AT AMELIORATING ADVERSE CHILDHOOD EXPERIENCES.

TO AID, SUPPORT AND ASSIST BY GIFTS, CONTRIBUTIONS OR OTHERWISE, OTHER CHARITABLE ORGANIZATIONS.

ALSO OPERATED THE KITSAP GREAT GIVE CAMPAIGN WHICH RAISED $1.4M FOR OVER 300 CHARITIES.

INVESTED DONOR ADVISED FUNDS AND OTHER CHARITABLE FUNDS FOR A REASONABLE RETURN WITH ACCEPTABLE RISK.

4b (Code:) (Expenses $ including grants of $) (Revenue $)

4c (Code:) (Expenses $ including grants of $) (Revenue $)

4d Other program services (Describe in Schedule O.)

(Expenses $ including grants of $) (Revenue $)

4e Total program service expenses ▶ 1,712,302.

Part IV Checklist of Required Schedules

			Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? *If "Yes," complete Schedule A*	1	X	
2	Is the organization required to complete *Schedule B, Schedule of Contributors*?	2	X	
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? *If "Yes," complete Schedule C, Part I*	3		X
4	**Section 501(c)(3) organizations.** Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? *If "Yes," complete Schedule C, Part II*	4		X
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? *If "Yes," complete Schedule C, Part III*	5		X
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? *If "Yes," complete Schedule D, Part I*	6	X	
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? *If "Yes," complete Schedule D, Part II*	7		X
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? *If "Yes," complete Schedule D, Part III*	8		X
9	Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? *If "Yes," complete Schedule D, Part IV*	9	X	
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? *If "Yes," complete Schedule D, Part V*	10	X	
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.			
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? *If "Yes," complete Schedule D, Part VI*	11a		X
b	Did the organization report an amount for investments - other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VII*	11b		X
c	Did the organization report an amount for investments - program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VIII*	11c	X	
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part IX*	11d		X
e	Did the organization report an amount for other liabilities in Part X, line 25? *If "Yes," complete Schedule D, Part X*	11e		X
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? *If "Yes," complete Schedule D, Part X*	11f	X	
12a	Did the organization obtain separate, independent audited financial statements for the tax year? *If "Yes," complete Schedule D, Parts XI and XII*	12a	X	
b	Was the organization included in consolidated, independent audited financial statements for the tax year? *If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional*	12b		X
13	Is the organization a school described in section 170(b)(1)(A)(ii)? *If "Yes," complete Schedule E*	13		X
14a	Did the organization maintain an office, employees, or agents outside of the United States?	14a		X
b	Did the organization have aggregate revenues or expenses of more than $10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at $100,000 or more? *If "Yes," complete Schedule F, Parts I and IV*	14b		X
15	Did the organization report on Part IX, column (A), line 3, more than $5,000 of grants or other assistance to or for any foreign organization? *If "Yes," complete Schedule F, Parts II and IV*	15		X
16	Did the organization report on Part IX, column (A), line 3, more than $5,000 of aggregate grants or other assistance to or for foreign individuals? *If "Yes," complete Schedule F, Parts III and IV*	16		X
17	Did the organization report a total of more than $15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? *If "Yes," complete Schedule G, Part I*	17		X
18	Did the organization report more than $15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? *If "Yes," complete Schedule G, Part II*	18	X	
19	Did the organization report more than $15,000 of gross income from gaming activities on Part VIII, line 9a? *If "Yes," complete Schedule G, Part III*	19		X
20a	Did the organization operate one or more hospital facilities? *If "Yes," complete Schedule H*	20a		X
b	If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?	20b		
21	Did the organization report more than $5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? *If "Yes," complete Schedule I, Parts I and II*	21	X	

Part IV Checklist of Required Schedules *(continued)*

			Yes	No
22	Did the organization report more than $5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? *If "Yes," complete Schedule I, Parts I and III*	22		X
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? *If "Yes," complete Schedule J*	23		X
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than $100,000 as of the last day of the year, that was issued after December 31, 2002? *If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a*	24a		X
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d		
25a	**Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.** Did the organization engage in an excess benefit transaction with a disqualified person during the year? *If "Yes," complete Schedule L, Part I*	25a		X
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? *If "Yes," complete Schedule L, Part I*	25b		X
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? *If "Yes," complete Schedule L, Part II*	26		X
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? *If "Yes," complete Schedule L, Part III*	27		X
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):			
a	A current or former officer, director, trustee, or key employee? *If "Yes," complete Schedule L, Part IV*	28a		X
b	A family member of a current or former officer, director, trustee, or key employee? *If "Yes," complete Schedule L, Part IV*	28b		X
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? *If "Yes," complete Schedule L, Part IV*	28c		X
29	Did the organization receive more than $25,000 in non-cash contributions? *If "Yes," complete Schedule M*	29	X	
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? *If "Yes," complete Schedule M*	30		X
31	Did the organization liquidate, terminate, or dissolve and cease operations? *If "Yes," complete Schedule N, Part I*	31		X
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? *If "Yes," complete Schedule N, Part II*	32		X
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? *If "Yes," complete Schedule R, Part I*	33	X	
34	Was the organization related to any tax-exempt or taxable entity? *If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1*	34		X
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)?	35a		X
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? *If "Yes," complete Schedule R, Part V, line 2*	35b		
36	**Section 501(c)(3) organizations.** Did the organization make any transfers to an exempt non-charitable related organization? *If "Yes," complete Schedule R, Part V, line 2*	36		X
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? *If "Yes," complete Schedule R, Part VI*	37		X
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? **Note.** All Form 990 filers are required to complete Schedule O	38	X	

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V ☐

					Yes	No
1a	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable	1a	10			
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable	1b	0			
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?			1c	X	

Part V Statements Regarding Other IRS Filings and Tax Compliance *(continued)*

				Yes	No
2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a 8			
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns?		2b	X	
	Note. If the sum of lines 1a and 2a is greater than 250, you may be required to *e-file* (see instructions)				
3a	Did the organization have unrelated business gross income of $1,000 or more during the year?		3a		X
b	If "Yes," has it filed a Form 990-T for this year? *If "No" to line 3b, provide an explanation in Schedule O*		3b		
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?		4a		X
b	If "Yes," enter the name of the foreign country: ▶				
	See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).				
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?		5a		X
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?		5b		X
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?		5c		
6a	Does the organization have annual gross receipts that are normally greater than $100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?		6a		X
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		6b		
7	**Organizations that may receive deductible contributions under section 170(c).**				
a	Did the organization receive a payment in excess of $75 made partly as a contribution and partly for goods and services provided to the payor?		7a	X	
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?		7b	X	
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?		7c		X
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d			
e	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?		7e		
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?		7f		
g	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?		7g		
h	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?		7h		
8	**Sponsoring organizations maintaining donor advised funds.** Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?		8		X
9	**Sponsoring organizations maintaining donor advised funds.**				
a	Did the sponsoring organization make any taxable distributions under section 4966?		9a		X
b	Did the sponsoring organization make a distribution to a donor, donor advisor, or related person?		9b		X
10	**Section 501(c)(7) organizations.** Enter:				
a	Initiation fees and capital contributions included on Part VIII, line 12	10a			
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities	10b			
11	**Section 501(c)(12) organizations.** Enter:				
a	Gross income from members or shareholders	11a			
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)	11b			
12a	**Section 4947(a)(1) non-exempt charitable trusts.** Is the organization filing Form 990 in lieu of Form 1041?		12a		
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year	12b			
13	**Section 501(c)(29) qualified nonprofit health insurance issuers.**				
a	Is the organization licensed to issue qualified health plans in more than one state?		13a		
	Note. See the instructions for additional information the organization must report on Schedule O.				
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	13b			
c	Enter the amount of reserves on hand	13c			
14a	Did the organization receive any payments for indoor tanning services during the tax year?		14a		X
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O*		14b		
15	Is the organization subject to the section 4960 tax on payment(s) of more than $1,000,000 in remuneration or excess parachute payment(s) during the year?		15		X
	If "Yes," see instructions and file Form 4720, Schedule N.				
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income?		16		X
	If "Yes," complete Form 4720, Schedule O.				

Part VI Governance, Management, and Disclosure *For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.*

Check if Schedule O contains a response or note to any line in this Part VI .... [X]

Section A. Governing Body and Management

			Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year ... **1a** 16 If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.			
b	Enter the number of voting members included in line 1a, above, who are independent ... **1b** 16			
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	**2**		X
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?	**3**		X
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?	**4**		X
5	Did the organization become aware during the year of a significant diversion of the organization's assets?	**5**		X
6	Did the organization have members or stockholders?	**6**		X
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	**7a**		X
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?	**7b**		X
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:			
a	The governing body?	**8a**	X	
b	Each committee with authority to act on behalf of the governing body?	**8b**	X	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? *If "Yes," provide the names and addresses in Schedule O*	**9**		X

Section B. Policies *(This Section B requests information about policies not required by the Internal Revenue Code.)*

			Yes	No
10a	Did the organization have local chapters, branches, or affiliates?	**10a**		X
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	**10b**		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	**11a**	X	
b	Describe in Schedule O the process, if any, used by the organization to review this Form 990.			
12a	Did the organization have a written conflict of interest policy? *If "No," go to line 13*	**12a**	X	
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	**12b**	X	
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? *If "Yes," describe in Schedule O how this was done*	**12c**	X	
13	Did the organization have a written whistleblower policy?	**13**	X	
14	Did the organization have a written document retention and destruction policy?	**14**	X	
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?			
a	The organization's CEO, Executive Director, or top management official	**15a**	X	
b	Other officers or key employees of the organization	**15b**	X	
	If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).			
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	**16a**		X
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	**16b**		

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed ▶WA

18 Section 6104 requires an organization to make its Forms 1023 (1024 or 1024-A if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

[ ] Own website [ ] Another's website [X] Upon request [ ] Other *(explain in Schedule O)*

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records ▶

THE ORGANIZATION - (360) 698-3622

PO BOX 3670, SILVERDALE, WA 98383

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee): Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former	(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
(1) HARRIETTE BRYANT BOARD MEMBER	1.00	X						0.	0.	0.
(2) DAVE SCHUREMAN TREASURER	1.00	X		X				0.	0.	0.
(3) RUTH BERNSTEIN SECRETARY	1.00	X		X				0.	0.	0.
(4) BILL BENSON BOARD MEMBER	1.00	X						0.	0.	0.
(5) JOHN ARTHUR BOARD MEMBER	1.00	X						0.	0.	0.
(6) PATTY LENT BOARD MEMBER	1.00	X						0.	0.	0.
(7) FRANK LEACH BOARD MEMBER	1.00	X						0.	0.	0.
(8) ALICE TAWRESEY CHAIR	1.00	X		X				0.	0.	0.
(9) RICK DARROW VICE CHAIR	1.00	X		X				0.	0.	0.
(10) DAVID DE BRUYN BOARD MEMBER	1.00	X						0.	0.	0.
(11) WALT DRAPER BOARD MEMBER	1.00	X						0.	0.	0.
(12) MARGEE DUNCAN BOARD MEMBER	1.00	X						0.	0.	0.
(13) DAPHNE LEE-LARSON BOARD MEMBER	1.00	X						0.	0.	0.
(14) CYNTHIA MARTIN BOARD MEMBER	1.00	X						0.	0.	0.
(15) TAMMIE ZECH BOARD MEMBER	1.00	X						0.	0.	0.
(16) JOAN DAVIS PAST-CHAIR	1.00	X		X				0.	0.	0.
(17) KOLBY MEDINA PRESIDENT & CEO	40.00			X				90,051.	0.	8,870.

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees *(continued)*

(A) Name and title	(B) Average hours per week (list any hours for related organizations below line)	(C) Position: Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former	(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
(18) SHAINE SCHRAMLING FUNDS & GRANTS OFFICER	30.00			X				48,406.	0.	1,347.

		(D)	(E)	(F)
1b	Sub-total ▶	138,457.	0.	10,217.
c	Total from continuation sheets to Part VII, Section A ▶	0.	0.	0.
d	Total (add lines 1b and 1c) ▶	138,457.	0.	10,217.

2 Total number of individuals (including but not limited to those listed above) who received more than $100,000 of reportable compensation from the organization ▶ 0

			Yes	No
3	Did the organization list any **former** officer, director, or trustee, key employee, or highest compensated employee on line 1a? *If "Yes," complete Schedule J for such individual*	3		X
4	For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than $150,000? *If "Yes," complete Schedule J for such individual*	4		X
5	Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? *If "Yes," complete Schedule J for such person*	5		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than $100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address NONE	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than $100,000 of compensation from the organization ▶ 0

Part VIII **Statement of Revenue**

Check if Schedule O contains a response or note to any line in this Part VIII ☐

Section	Line	Description	Sub-box	Amount	(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512 - 514
Contributions, Gifts, Grants and Other Similar Amounts	1 a	Federated campaigns	1a					
	b	Membership dues	1b					
	c	Fundraising events	1c	134,894.				
	d	Related organizations	1d					
	e	Government grants (contributions)	1e					
	f	All other contributions, gifts, grants, and similar amounts not included above	1f	1,933,886.				
	g	Noncash contributions included in lines 1a-1f: $		15,050.				
	h	**Total.** Add lines 1a-1f ▶			2,068,780.			
Program Service Revenue			Business Code					
	2 a	FUND MGT FEES & OTHER	523920		165,319.	165,319.		
	b							
	c							
	d							
	e							
	f	All other program service revenue						
	g	**Total.** Add lines 2a-2f ▶			165,319.			
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts) ▶			230,862.			230,862.
	4	Income from investment of tax-exempt bond proceeds ▶						
	5	Royalties ▶						
			(i) Real	(ii) Personal				
	6 a	Gross rents						
	b	Less: rental expenses						
	c	Rental income or (loss)						
	d	Net rental income or (loss) ▶						
			(i) Securities	(ii) Other				
	7 a	Gross amount from sales of assets other than inventory		275,690.				
	b	Less: cost or other basis and sales expenses		0.				
	c	Gain or (loss)		275,690.				
	d	Net gain or (loss) ▶			275,690.			275,690.
	8 a	Gross income from fundraising events (not including $ 134,894. of contributions reported on line 1c). See Part IV, line 18	a	25,981.				
	b	Less: direct expenses	b	49,034.				
	c	Net income or (loss) from fundraising events ▶			-23,053.			-23,053.
	9 a	Gross income from gaming activities. See Part IV, line 19	a					
	b	Less: direct expenses	b					
	c	Net income or (loss) from gaming activities ▶						
	10 a	Gross sales of inventory, less returns and allowances	a					
	b	Less: cost of goods sold	b					
	c	Net income or (loss) from sales of inventory ▶						
		Miscellaneous Revenue	Business Code					
	11 a	MISCELLANEOUS	999999		1,533.	1,533.		
	b							
	c							
	d	All other revenue						
	e	**Total.** Add lines 11a-11d ▶			1,533.			
	12	**Total revenue.** See instructions ▶			2,719,131.	166,852.	0.	483,499.

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX X

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21	948,496.	948,496.		
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees	143,698.	114,958.	14,370.	14,370.
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7 Other salaries and wages	258,013.	214,004.	17,287.	26,722.
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)				
9 Other employee benefits	15,232.	12,696.	951.	1,585.
10 Payroll taxes	30,482.	24,978.	2,384.	3,120.
11 Fees for services (non-employees):				
a Management				
b Legal				
c Accounting	8,556.		8,556.	
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Sch O.)	307,856.	307,856.		
12 Advertising and promotion	48,377.	2,791.	4,011.	41,575.
13 Office expenses	40,533.	23,327.	4,377.	12,829.
14 Information technology	19,847.	5,960.	13,887.	
15 Royalties				
16 Occupancy	30,895.	15,811.	12,626.	2,458.
17 Travel	6,125.	5,022.	735.	368.
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings	44,485.	36,403.	5,388.	2,694.
20 Interest				
21 Payments to affiliates				
22 Depreciation, depletion, and amortization				
23 Insurance	3,664.		3,664.	
24 Other expenses. Itemize expenses not covered above. (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a DUES & SUBSCRIPTIONS	2,384.		2,384.	
b				
c				
d				
e All other expenses				
25 **Total functional expenses.** Add lines 1 through 24e	1,908,643.	1,712,302.	90,620.	105,721.
26 **Joint costs.** Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here ▶ ☐ if following SOP 98-2 (ASC 958-720)				

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X

			(A) Beginning of year		(B) End of year
Assets	1	Cash - non-interest-bearing		1	
	2	Savings and temporary cash investments	767,455.	2	1,057,416.
	3	Pledges and grants receivable, net		3	2,250.
	4	Accounts receivable, net	10,923.	4	30,364.
	5	Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L		5	
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instr). Complete Part II of Sch L		6	
	7	Notes and loans receivable, net		7	
	8	Inventories for sale or use		8	
	9	Prepaid expenses and deferred charges		9	
	10a	Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D 10a			
	b	Less: accumulated depreciation 10b		10c	
	11	Investments - publicly traded securities		11	
	12	Investments - other securities. See Part IV, line 11	23,777.	12	38,827.
	13	Investments - program-related. See Part IV, line 11	11,257,421.	13	11,360,224.
	14	Intangible assets		14	
	15	Other assets. See Part IV, line 11	3,500.	15	3,500.
	16	**Total assets.** Add lines 1 through 15 (must equal line 34)	12,063,076.	16	12,492,581.
Liabilities	17	Accounts payable and accrued expenses	26,671.	17	31,899.
	18	Grants payable		18	
	19	Deferred revenue		19	
	20	Tax-exempt bond liabilities		20	
	21	Escrow or custodial account liability. Complete Part IV of Schedule D	2,337,911.	21	2,407,925.
	22	Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		22	
	23	Secured mortgages and notes payable to unrelated third parties		23	
	24	Unsecured notes and loans payable to unrelated third parties		24	
	25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D		25	
	26	**Total liabilities.** Add lines 17 through 25	2,364,582.	26	2,439,824.
Net Assets or Fund Balances		**Organizations that follow SFAS 117 (ASC 958), check here ▶ [X] and complete lines 27 through 29, and lines 33 and 34.**			
	27	Unrestricted net assets	5,218,160.	27	5,387,949.
	28	Temporarily restricted net assets	4,480,334.	28	4,664,808.
	29	Permanently restricted net assets		29	
		Organizations that do not follow SFAS 117 (ASC 958), check here ▶ [ ] and complete lines 30 through 34.			
	30	Capital stock or trust principal, or current funds		30	
	31	Paid-in or capital surplus, or land, building, or equipment fund		31	
	32	Retained earnings, endowment, accumulated income, or other funds		32	
	33	Total net assets or fund balances	9,698,494.	33	10,052,757.
	34	Total liabilities and net assets/fund balances	12,063,076.	34	12,492,581.

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI ☐

1	Total revenue (must equal Part VIII, column (A), line 12)	1	2,719,131.
2	Total expenses (must equal Part IX, column (A), line 25)	2	1,908,643.
3	Revenue less expenses. Subtract line 2 from line 1	3	810,488.
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	9,698,494.
5	Net unrealized gains (losses) on investments	5	-456,225.
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain in Schedule O)	9	0.
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	10,052,757.

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII ☒

			Yes	No
1	Accounting method used to prepare the Form 990: ☐ Cash ☒ Accrual ☐ Other If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.			
2a	Were the organization's financial statements compiled or reviewed by an independent accountant?	2a		X
	If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: ☐ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis			
b	Were the organization's financial statements audited by an independent accountant?	2b	X	
	If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: ☒ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis			
c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?	2c	X	
	If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.			
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?	3a		X
b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits	3b		

SCHEDULE A (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ Attach to Form 990 or Form 990-EZ.
▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047
2018
Open to Public Inspection

Name of the organization KITSAP COMMUNITY FOUNDATION
Employer identification number 94-3205217

Part I **Reason for Public Charity Status** (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

1 ☐ A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**
2 ☐ A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E (Form 990 or 990-EZ).)
3 ☐ A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**
4 ☐ A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:
5 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)
6 ☐ A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**
7 ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)
8 ☐ A community trust described in **section 170(b)(1)(A)(vi).** (Complete Part II.)
9 ☐ An agricultural research organization described in **section 170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land-grant college of agriculture (see instructions). Enter the name, city, and state of the college or university:
10 ☐ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)
11 ☐ An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**
12 ☐ An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2)**. See **section 509(a)(3).** Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

a ☐ **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

b ☐ **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

c ☐ **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

d ☐ **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

e ☐ Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations ....

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-10 above (see instructions))	(iv) Is the organization listed in your governing document? Yes	No	(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
Total						

Part II **Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)**

(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2014	(b) 2015	(c) 2016	(d) 2017	(e) 2018	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")	2,191,332.	1,810,543.	6,771,595.	1,898,514.	2,068,780.	14,740,764.
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 **Total.** Add lines 1 through 3	2,191,332.	1,810,543.	6,771,595.	1,898,514.	2,068,780.	14,740,764.
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						
6 **Public support.** Subtract line 5 from line 4.						14,740,764.

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2014	(b) 2015	(c) 2016	(d) 2017	(e) 2018	(f) Total
7 Amounts from line 4	2,191,332.	1,810,543.	6,771,595.	1,898,514.	2,068,780.	14,740,764.
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources	118,618.	90,877.	249,785.	258,804.	396,181.	1,114,265.
9 Net income from unrelated business activities, whether or not the business is regularly carried on						
10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)	752.	822.	1,260.	1,411.	1,533.	5,778.
11 **Total support.** Add lines 7 through 10						15,860,807.

12 Gross receipts from related activities, etc. (see instructions) 12

13 **First five years.** If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here** ..... ▶ ☐

Section C. Computation of Public Support Percentage

14 Public support percentage for 2018 (line 6, column (f) divided by line 11, column (f)) ..... 14 92.94 %

15 Public support percentage from 2017 Schedule A, Part II, line 14 ..... 15 94.16 %

16a **33 1/3% support test - 2018.** If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization ..... ▶ ☒

b **33 1/3% support test - 2017.** If the organization did not check a box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization ..... ▶ ☐

17a **10% -facts-and-circumstances test - 2018.** If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and **stop here.** Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization ..... ▶ ☐

b **10% -facts-and-circumstances test - 2017.** If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and **stop here.** Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization ..... ▶ ☐

18 **Private foundation.** If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions ..... ▶ ☐

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2014	(b) 2015	(c) 2016	(d) 2017	(e) 2018	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 **Total.** Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of $5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b						
8 **Public support.** (Subtract line 7c from line 6.)						

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2014	(b) 2015	(c) 2016	(d) 2017	(e) 2018	(f) Total
9 Amounts from line 6						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						
c Add lines 10a and 10b						
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on						
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13 **Total support.** (Add lines 9, 10c, 11, and 12.)						

14 **First five years.** If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here** ▶ ☐

Section C. Computation of Public Support Percentage

15	Public support percentage for 2018 (line 8, column (f), divided by line 13, column (f))	15	%
16	Public support percentage from 2017 Schedule A, Part III, line 15	16	%

Section D. Computation of Investment Income Percentage

17	Investment income percentage for **2018** (line 10c, column (f), divided by line 13, column (f))	17	%
18	Investment income percentage from **2017** Schedule A, Part III, line 17	18	%

19a **33 1/3% support tests - 2018.** If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization ▶ ☐

b **33 1/3% support tests - 2017.** If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3%, and line 18 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization ▶ ☐

20 **Private foundation.** If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions ▶ ☐

Part IV Supporting Organizations

(Complete only if you checked a box in line 12 on Part I. If you checked 12a of Part I, complete Sections A and B. If you checked 12b of Part I, complete Sections A and C. If you checked 12c of Part I, complete Sections A, D, and E. If you checked 12d of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

			Yes	No
1	Are all of the organization's supported organizations listed by name in the organization's governing documents? *If "No," describe in* **Part VI** *how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.*	1		
2	Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? *If "Yes," explain in* **Part VI** *how the organization determined that the supported organization was described in section 509(a)(1) or (2).*	2		
3a	Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? *If "Yes," answer (b) and (c) below.*	3a		
b	Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? *If "Yes," describe in* **Part VI** *when and how the organization made the determination.*	3b		
c	Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? *If "Yes," explain in* **Part VI** *what controls the organization put in place to ensure such use.*	3c		
4a	Was any supported organization not organized in the United States ("foreign supported organization")? *If "Yes," and if you checked 12a or 12b in Part I, answer (b) and (c) below.*	4a		
b	Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? *If "Yes," describe in* **Part VI** *how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.*	4b		
c	Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? *If "Yes," explain in* **Part VI** *what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.*	4c		
5a	Did the organization add, substitute, or remove any supported organizations during the tax year? *If "Yes," answer (b) and (c) below (if applicable). Also, provide detail in* **Part VI,** *including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).*	5a		
b	**Type I or Type II only.** Was any added or substituted supported organization part of a class already designated in the organization's organizing document?	5b		
c	**Substitutions only.** Was the substitution the result of an event beyond the organization's control?	5c		
6	Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? *If "Yes," provide detail in* **Part VI.**	6		
7	Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (as defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? *If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).*	7		
8	Did the organization make a loan to a disqualified person (as defined in section 4958) not described in line 7? *If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).*	8		
9a	Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? *If "Yes," provide detail in* **Part VI.**	9a		
b	Did one or more disqualified persons (as defined in line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? *If "Yes," provide detail in* **Part VI.**	9b		
c	Did a disqualified person (as defined in line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? *If "Yes," provide detail in* **Part VI.**	9c		
10a	Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? *If "Yes," answer 10b below.*	10a		
b	Did the organization have any excess business holdings in the tax year? *(Use Schedule C, Form 4720, to determine whether the organization had excess business holdings.)*	10b		

Part IV Supporting Organizations *(continued)*

			Yes	No
11	Has the organization accepted a gift or contribution from any of the following persons?			
a	A person who directly or indirectly controls, either alone or together with persons described in (b) and (c) below, the governing body of a supported organization?	**11a**		
b	A family member of a person described in (a) above?	**11b**		
c	A 35% controlled entity of a person described in (a) or (b) above? *If "Yes" to a, b, or c, provide detail in* **Part VI.**	**11c**		

Section B. Type I Supporting Organizations

			Yes	No
1	Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? *If "No," describe in* **Part VI** *how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.*	**1**		
2	Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? *If "Yes," explain in* **Part VI** *how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.*	**2**		

Section C. Type II Supporting Organizations

			Yes	No
1	Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? *If "No," describe in* **Part VI** *how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).*	**1**		

Section D. All Type III Supporting Organizations

			Yes	No
1	Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?	**1**		
2	Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? *If "No," explain in* **Part VI** *how the organization maintained a close and continuous working relationship with the supported organization(s).*	**2**		
3	By reason of the relationship described in (2), did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? *If "Yes," describe in* **Part VI** *the role the organization's supported organizations played in this regard.*	**3**		

Section E. Type III Functionally Integrated Supporting Organizations

1 *Check the box next to the method that the organization used to satisfy the Integral Part Test during the year* **(see instructions).**

a ☐ The organization satisfied the Activities Test. *Complete* **line 2** *below.*

b ☐ The organization is the parent of each of its supported organizations. *Complete* **line 3** *below.*

c ☐ The organization supported a governmental entity. *Describe in* **Part VI** *how you supported a government entity (see instructions).*

			Yes	No
2	Activities Test. **Answer (a) and (b) below.**			
a	Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? *If "Yes," then in* **Part VI identify those supported organizations and explain** *how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.*	**2a**		
b	Did the activities described in (a) constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? *If "Yes," explain in* **Part VI** *the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.*	**2b**		
3	Parent of Supported Organizations. **Answer (a) and (b) below.**			
a	Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? *Provide details in* **Part VI.**	**3a**		
b	Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? *If "Yes," describe in* **Part VI** *the role played by the organization in this regard.*	**3b**		

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations

1 ☐ Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970 (explain in Part VI.) **See instructions.** All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

Section A - Adjusted Net Income		(A) Prior Year	(B) Current Year (optional)
1 Net short-term capital gain	1		
2 Recoveries of prior-year distributions	2		
3 Other gross income (see instructions)	3		
4 Add lines 1 through 3	4		
5 Depreciation and depletion	5		
6 Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	6		
7 Other expenses (see instructions)	7		
8 **Adjusted Net Income** (subtract lines 5, 6, and 7 from line 4)	8		

Section B - Minimum Asset Amount		(A) Prior Year	(B) Current Year (optional)
1 Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):			
a Average monthly value of securities	1a		
b Average monthly cash balances	1b		
c Fair market value of other non-exempt-use assets	1c		
d **Total** (add lines 1a, 1b, and 1c)	1d		
e **Discount** claimed for blockage or other factors (explain in detail in **Part VI**):			
2 Acquisition indebtedness applicable to non-exempt-use assets	2		
3 Subtract line 2 from line 1d	3		
4 Cash deemed held for exempt use. Enter 1-1/2% of line 3 (for greater amount, see instructions)	4		
5 Net value of non-exempt-use assets (subtract line 4 from line 3)	5		
6 Multiply line 5 by .035	6		
7 Recoveries of prior-year distributions	7		
8 **Minimum Asset Amount** (add line 7 to line 6)	8		

Section C - Distributable Amount			Current Year
1 Adjusted net income for prior year (from Section A, line 8, Column A)	1		
2 Enter 85% of line 1	2		
3 Minimum asset amount for prior year (from Section B, line 8, Column A)	3		
4 Enter greater of line 2 or line 3	4		
5 Income tax imposed in prior year	5		
6 **Distributable Amount.** Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions)	6		

7 ☐ Check here if the current year is the organization's first as a non-functionally integrated Type III supporting organization (see instructions).

Part V | Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations *(continued)*

Section D - Distributions	**Current Year**
1 Amounts paid to supported organizations to accomplish exempt purposes	
2 Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity	
3 Administrative expenses paid to accomplish exempt purposes of supported organizations	
4 Amounts paid to acquire exempt-use assets	
5 Qualified set-aside amounts (prior IRS approval required)	
6 Other distributions (describe in **Part VI**). See instructions.	
7 **Total annual distributions.** Add lines 1 through 6.	
8 Distributions to attentive supported organizations to which the organization is responsive (provide details in **Part VI**). See instructions.	
9 Distributable amount for 2018 from Section C, line 6	
10 Line 8 amount divided by line 9 amount	

Section E - Distribution Allocations (see instructions)	**(i)** Excess Distributions	**(ii)** Underdistributions Pre-2018	**(iii)** Distributable Amount for 2018
1 Distributable amount for 2018 from Section C, line 6			
2 Underdistributions, if any, for years prior to 2018 (reasonable cause required- explain in **Part VI**). See instructions.			
3 Excess distributions carryover, if any, to 2018			
a From 2013			
b From 2014			
c From 2015			
d From 2016			
e From 2017			
f **Total** of lines 3a through e			
g Applied to underdistributions of prior years			
h Applied to 2018 distributable amount			
i Carryover from 2013 not applied (see instructions)			
j Remainder. Subtract lines 3g, 3h, and 3i from 3f.			
4 Distributions for 2018 from Section D, line 7: $			
a Applied to underdistributions of prior years			
b Applied to 2018 distributable amount			
c Remainder. Subtract lines 4a and 4b from 4.			
5 Remaining underdistributions for years prior to 2018, if any. Subtract lines 3g and 4a from line 2. For result greater than zero, explain in **Part VI.** See instructions.			
6 Remaining underdistributions for 2018. Subtract lines 3h and 4b from line 1. For result greater than zero, explain in **Part VI**. See instructions.			
7 **Excess distributions carryover to 2019.** Add lines 3j and 4c.			
8 Breakdown of line 7:			
a Excess from 2014			
b Excess from 2015			
c Excess from 2016			
d Excess from 2017			
e Excess from 2018			

Part VI **Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; Part III, line 12; Part IV, Section A, lines 1, 2, 3b, 3c, 4b, 4c, 5a, 6, 9a, 9b, 9c, 11a, 11b, and 11c; Part IV, Section B, lines 1 and 2; Part IV, Section C, line 1; Part IV, Section D, lines 2 and 3; Part IV, Section E, lines 1c, 2a, 2b, 3a, and 3b; Part V, line 1; Part V, Section B, line 1e; Part V, Section D, lines 5, 6, and 8; and Part V, Section E, lines 2, 5, and 6. Also complete this part for any additional information. (See instructions.)

SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
▶ Attach to Form 990.
▶Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047
2018
Open to Public Inspection

Name of the organization KITSAP COMMUNITY FOUNDATION
Employer identification number 94-3205217

Part I **Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.** Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

		(a) Donor advised funds	(b) Funds and other accounts
1	Total number at end of year	44	2
2	Aggregate value of contributions to (during year)	575,070.	13,109.
3	Aggregate value of grants from (during year)	1,011,809.	2,000.
4	Aggregate value at end of year	7,491,206.	30,593.

5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? [X] Yes [ ] No

6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? [X] Yes [ ] No

Part II **Conservation Easements.** Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).
- [ ] Preservation of land for public use (e.g., recreation or education)
- [ ] Preservation of a historically important land area
- [ ] Protection of natural habitat
- [ ] Preservation of a certified historic structure
- [ ] Preservation of open space

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

			Held at the End of the Tax Year
a	Total number of conservation easements	2a	
b	Total acreage restricted by conservation easements	2b	
c	Number of conservation easements on a certified historic structure included in (a)	2c	
d	Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register	2d	

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶

4 Number of states where property subject to conservation easement is located ▶

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? [ ] Yes [ ] No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? [ ] Yes [ ] No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III **Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.** Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ $

(ii) Assets included in Form 990, Part X ▶ $

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items:

a Revenue included on Form 990, Part VIII, line 1 ▶ $

b Assets included in Form 990, Part X ▶ $

Part III **Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets** *(continued)*

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):

a ☐ Public exhibition
b ☐ Scholarly research
c ☐ Preservation for future generations
d ☐ Loan or exchange programs
e ☐ Other

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? ☐ Yes ☐ No

Part IV **Escrow and Custodial Arrangements.** Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? ☐ Yes ☒ No

b If "Yes," explain the arrangement in Part XIII and complete the following table:

		Amount
c Beginning balance	1c	
d Additions during the year	1d	
e Distributions during the year	1e	
f Ending balance	1f	

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☒ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII ☒

Part V **Endowment Funds.** Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

	(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a Beginning of year balance	4,091,751.	3,649,810.	2,477,249.	2,072,302.	2,150,800.
b Contributions	799,184.	1,040,192.	2,731,078.	1,027,051.	1,034,723.
c Net investment earnings, gains, and losses	40,835.	297,857.	366,098.	181,036.	-43,888.
d Grants or scholarships	687,550.	896,108.	1,924,615.	803,140.	1,069,333.
e Other expenditures for facilities and programs					
f Administrative expenses					
g End of year balance	4,244,220.	4,091,751.	3,649,810.	2,477,249.	2,072,302.

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment ▶ 2.88 %
b Permanent endowment ▶ .00 %
c Temporarily restricted endowment ▶ 97.12 %

The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

		Yes	No
(i) unrelated organizations	3a(i)		X
(ii) related organizations	3a(ii)		X
b If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?	3b		

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI **Land, Buildings, and Equipment.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a Land				
b Buildings				
c Leasehold improvements				
d Equipment				
e Other				
Total. Add lines 1a through 1e. *(Column (d) must equal Form 990, Part X, column (B), line 10c.)* ▶				0.

Schedule D (Form 990) 2018

Part VII Investments - Other Securities.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives		
(2) Closely-held equity interests		
(3) Other		
(A)		
(B)		
(C)		
(D)		
(E)		
(F)		
(G)		
(H)		
Total. (Col. (b) must equal Form 990, Part X, col. (B) line 12.) ▶		

Part VIII Investments - Program Related.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) BNY MELLON WEALTH		
(2) MANAGEMENT PORFOLIO	6,698,986.	END-OF-YEAR MARKET VALUE
(3) HALBERT HARGROVE		
(4) PORTFOLIO	4,661,238.	END-OF-YEAR MARKET VALUE
(5)		
(6)		
(7)		
(8)		
(9)		
Total. (Col. (b) must equal Form 990, Part X, col. (B) line 13.) ▶	11,360,224.	

Part IX Other Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
Total. *(Column (b) must equal Form 990, Part X, col. (B) line 15.)* ▶	

Part X Other Liabilities.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

1. (a) Description of liability	(b) Book value
(1) Federal income taxes	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
Total. *(Column (b) must equal Form 990, Part X, col. (B) line 25.)* ▶	

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII [X]

Part XI Reconciliation of Revenue per Audited Financial Statements With Revenue per Return.

Complete if the organization answered "Yes" on Form 990, Part IV, line 12a.

1	Total revenue, gains, and other support per audited financial statements			1	2,274,656.
2	Amounts included on line 1 but not on Form 990, Part VIII, line 12:				
a	Net unrealized gains (losses) on investments	2a	-456,225.		
b	Donated services and use of facilities	2b	11,750.		
c	Recoveries of prior year grants	2c			
d	Other (Describe in Part XIII.)	2d			
e	Add lines **2a** through **2d**			2e	-444,475.
3	Subtract line **2e** from line **1**			3	2,719,131.
4	Amounts included on Form 990, Part VIII, line 12, but not on line 1:				
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a			
b	Other (Describe in Part XIII.)	4b			
c	Add lines **4a** and **4b**			4c	0.
5	Total revenue. Add lines **3** and **4c.** *(This must equal Form 990, Part I, line 12.)*			5	2,719,131.

Part XII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return.

Complete if the organization answered "Yes" on Form 990, Part IV, line 12a.

1	Total expenses and losses per audited financial statements			1	1,920,393.
2	Amounts included on line 1 but not on Form 990, Part IX, line 25:				
a	Donated services and use of facilities	2a	11,750.		
b	Prior year adjustments	2b			
c	Other losses	2c			
d	Other (Describe in Part XIII.)	2d			
e	Add lines **2a** through **2d**			2e	11,750.
3	Subtract line **2e** from line **1**			3	1,908,643.
4	Amounts included on Form 990, Part IX, line 25, but not on line 1:				
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a			
b	Other (Describe in Part XIII.)	4b			
c	Add lines **4a** and **4b**			4c	0.
5	Total expenses. Add lines **3** and **4c.** *(This must equal Form 990, Part I, line 18.)*			5	1,908,643.

Part XIII Supplemental Information.

Provide the descriptions required for Part II, lines 3, 5, and 9; Part III, lines 1a and 4; Part IV, lines 1b and 2b; Part V, line 4; Part X, line 2; Part XI, lines 2d and 4b; and Part XII, lines 2d and 4b. Also complete this part to provide any additional information.

PART IV, LINE 2B:

KITSAP COMMUNITY FOUNDATION ACTS AS AN AGENT FOR FUNDS TO BE PROVIDED TO OR FOR THE BENEFIT OF OTHER AGENCIES. AS OF SEPTEMBER 30, 2019, THERE WERE 29 NONPROFIT AGENCIES PART OF THE CUSTODIAL FUND.

PART X, LINE 2:

KCF IS EXEMPT FROM FEDERAL INCOME TAXES UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE AND THEREFORE HAS MADE NO PROVISION FOR FEDERAL INCOME TAXES IN THE ACCOMPANYING FINANCIAL STATEMENTS. IN ADDITION, IT HAS BEEN DETERMINED BY THE INTERNAL REVENUE SERVICE NOT TO BE A PRIVATE FOUNDATION WITHIN THE MEANING OF SECTION 509(A) OF THE INTERNAL REVENUE CODE.

Part XIII Supplemental Information *(continued)*

KCF HAS ADOPTED THE RECOGNITION REQUIREMENTS FOR UNCERTAIN INCOME TAX POSITIONS AS REQUIRED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. KCF HAS ANALYZED THE TAX POSITIONS TAKEN IN ITS FILINGS WITH THE INTERNAL REVENUE SERVICE AND STATE JURISDICTIONS WHERE IT OPERATES. KCF BELIEVES THAT ITS INCOME TAX FILING POSITION WILL BE SUSTAINED UPON EXAMINATION AND DOES NOT ANTICIPATE ANY ADJUSTMENTS THAT WOULD RESULT IN A MATERIAL ADVERSE EFFECT ON THE KCF'S FINANCIAL CONDITION, RESULTS OF OPERATIONS OR CASH FLOW.

KCF IS SUBJECT TO ROUTINE AUDITS BY TAXING JURISDICTIONS; HOWEVER THERE ARE CURRENTLY NO AUDITS FOR ANY TAX PERIODS IN PROGRESS. KCF BELIEVES IT IS NO LONGER SUBJECT TO INCOME TAX EXAMINATIONS FOR YEARS PRIOR TO SEPTEMBER 30, 2016.

SCHEDULE G (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information Regarding Fundraising or Gaming Activities

Complete if the organization answered "Yes" on Form 990, Part IV, line 17, 18, or 19, or if the organization entered more than $15,000 on Form 990-EZ, line 6a.

▶ Attach to Form 990 or Form 990-EZ.

▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2018

Open to Public Inspection

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number 94-3205217

Part I **Fundraising Activities.** Complete if the organization answered "Yes" on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- **a** ☐ Mail solicitations
- **b** ☐ Internet and email solicitations
- **c** ☐ Phone solicitations
- **d** ☐ In-person solicitations
- **e** ☐ Solicitation of non-government grants
- **f** ☐ Solicitation of government grants
- **g** ☐ Special fundraising events

2 a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? ☐ **Yes** ☐ **No**

b If "Yes," list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least $5,000 by the organization.

(i) Name and address of individual or entity (fundraiser)	**(ii)** Activity	**(iii)** Did fundraiser have custody or control of contributions? Yes	No	**(iv)** Gross receipts from activity	**(v)** Amount paid to (or retained by) fundraiser listed in col. **(i)**	**(vi)** Amount paid to (or retained by) organization
Total ▶						

3 List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing.

Part II **Fundraising Events.** Complete if the organization answered "Yes" on Form 990, Part IV, line 18, or reported more than $15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than $5,000.

		(a) Event #1 CELEBRATION OF PHILANTHR (event type)	(b) Event #2 (event type)	(c) Other events NONE (total number)	(d) Total events (add col. (a) through col. (c))
Revenue	1 Gross receipts	160,875.			160,875.
	2 Less: Contributions	134,894.			134,894.
	3 Gross income (line 1 minus line 2)	25,981.			25,981.
Direct Expenses	4 Cash prizes				
	5 Noncash prizes				
	6 Rent/facility costs	20,071.			20,071.
	7 Food and beverages	17,200.			17,200.
	8 Entertainment				
	9 Other direct expenses	11,763.			11,763.
	10 Direct expense summary. Add lines 4 through 9 in column (d) ▶				49,034.
	11 Net income summary. Subtract line 10 from line 3, column (d) ▶				-23,053.

Part III **Gaming.** Complete if the organization answered "Yes" on Form 990, Part IV, line 19, or reported more than $15,000 on Form 990-EZ, line 6a.

		(a) Bingo	(b) Pull tabs/instant bingo/progressive bingo	(c) Other gaming	(d) Total gaming (add col. (a) through col. (c))
Revenue	1 Gross revenue				
Direct Expenses	2 Cash prizes				
	3 Noncash prizes				
	4 Rent/facility costs				
	5 Other direct expenses				
	6 Volunteer labor	☐ Yes ____ % ☐ No	☐ Yes ____ % ☐ No	☐ Yes ____ % ☐ No	
	7 Direct expense summary. Add lines 2 through 5 in column (d) ▶				
	8 Net gaming income summary. Subtract line 7 from line 1, column (d) ▶				

9 Enter the state(s) in which the organization conducts gaming activities: ____

a Is the organization licensed to conduct gaming activities in each of these states? ☐ Yes ☐ No

b If "No," explain: ____

10a Were any of the organization's gaming licenses revoked, suspended, or terminated during the tax year? ☐ Yes ☐ No

b If "Yes," explain: ____

11 Does the organization conduct gaming activities with nonmembers? ☐ Yes ☐ No

12 Is the organization a grantor, beneficiary or trustee of a trust, or a member of a partnership or other entity formed to administer charitable gaming? ☐ Yes ☐ No

13 Indicate the percentage of gaming activity conducted in:

a The organization's facility	13a	%
b An outside facility	13b	%

14 Enter the name and address of the person who prepares the organization's gaming/special events books and records:

Name ▶

Address ▶

15a Does the organization have a contract with a third party from whom the organization receives gaming revenue? ☐ Yes ☐ No

b If "Yes," enter the amount of gaming revenue received by the organization ▶ $ ________ and the amount of gaming revenue retained by the third party ▶ $ ________

c If "Yes," enter name and address of the third party:

Name ▶

Address ▶

16 Gaming manager information:

Name ▶

Gaming manager compensation ▶ $

Description of services provided ▶

☐ Director/officer ☐ Employee ☐ Independent contractor

17 Mandatory distributions:

a Is the organization required under state law to make charitable distributions from the gaming proceeds to retain the state gaming license? ☐ Yes ☐ No

b Enter the amount of distributions required under state law to be distributed to other exempt organizations or spent in the organization's own exempt activities during the tax year ▶ $

Part IV **Supplemental Information.** Provide the explanations required by Part I, line 2b, columns (iii) and (v); and Part III, lines 9, 9b, 10b, 15b, 15c, 16, and 17b, as applicable. Also provide any additional information. See instructions.

Part IV Supplemental Information *(continued)*

SCHEDULE I (Form 990)

Department of the Treasury Internal Revenue Service

Grants and Other Assistance to Organizations, Governments, and Individuals in the United States

Complete if the organization answered "Yes" on Form 990, Part IV, line 21 or 22.

▶ Attach to Form 990.

▶ Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047

2018

Open to Public Inspection

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number: 94-3205217

Part I General Information on Grants and Assistance

1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? [X] Yes [ ] No

2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" on Form 990, Part IV, line 21, for any recipient that received more than $5,000. Part II can be duplicated if additional space is needed.

1 (a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of noncash assistance	(h) Purpose of grant or assistance
HOLLY RIDGE CENTER 5112 NW TAYLOR RD BREMERTON, TX 98312	91-0757541	501(C)(3)	21,000.	0.			OPERATIONS AND SUPPORT.
BREMERTON FOODLINE 1600 12TH STREET BREMERTON, WA 98337	91-1111086	501(C)(3)	9,566.	0.			OPERATIONS AND SUPPORT.
CENTRAL KITSAP FOOD BANK PO BOX 748 SILVERDALE, WA 98383	91-1425561	501(C)(3)	7,878.	0.			OPERATIONS AND SUPPORT.
OLYMPIC COLLEGE 1600 CHESTER AVE BREMERTON, WA 98337		501(C)(3)	5,839.	0.			OPERATIONS AND SUPPORT.
OLYMPIC EDUCATIONAL SERVICE DISTRICT 114 - 105 NATIONAL AVE N - BREMERTON, WA 98312	91-0919927	501(C)(3)	7,000.	0.			OPERATIONS AND SUPPORT.
THE COFFEE OASIS 837 FOURTH ST BREMERTON, WA 98337	91-1745050	501(C)(3)	26,000.	0.			OPERATIONS AND SUPPORT.

2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table ▶

3 Enter total number of other organizations listed in the line 1 table ▶

LHA **For Paperwork Reduction Act Notice, see the Instructions for Form 990.** **Schedule I (Form 990) (2018)**

832101 11-02-18

Part II **Continuation of Grants and Other Assistance to Governments and Organizations in the United States** (Schedule I (Form 990), Part II.)

(a) Name and address of organization or government	**(b)** EIN	**(c)** IRC section if applicable	**(d)** Amount of cash grant	**(e)** Amount of non-cash assistance	**(f)** Method of valuation (book, FMV, appraisal, other)	**(g)** Description of non-cash assistance	**(h)** Purpose of grant or assistance
ONE HEART WILD EDUCATION SANCTUARY 12620 WILLAMETTE MERIDIAN RD SILVERDALE, WA 98383	47-3649523	501(C)(3)	7,500.	0.			OPERATIONS AND SUPPORT.
LEADERSHIP KITSAP 645 4TH STREET STE 100 BREMERTON, WA 98337	91-1628975	501(C)(3)	14,500.	0.			OPERATIONS AND SUPPORT.
KITSAP REGIONAL LIBRARY FOUNDATION 1301 SYLVAN WAY BREMERTON, WA 98310	91-1605136	501(C)(3)	14,000.	0.			OPERATIONS AND SUPPORT.
PATH PO BOX 19210 SEATTLE, WA 98109	91-1157127	501(C)(3)	25,000.	0.			OPERATIONS AND SUPPORT.
OUR G.E.M.S. (OUR GIRLS EMPOWERED THROUGH MENTORING AND SERVICE) - PO BOX 1822 - SILVERDALE, WA 98383	45-5223468	501(C)(3)	10,000.	0.			OPERATIONS AND SUPPORT.
SALVATION ARMY PO BOX 886 BREMERTON, WA 98337	94-1156347	501(C)(3)	20,001.	0.			OPERATIONS AND SUPPORT.
BREMERTON SYMPHONY ASSOCIATION PO BOX 996 BREMERTON, WA 98337	91-1996368	501(C)(3)	45,731.	0.			OPERATIONS AND SUPPORT.
SCARLET ROAD PO BOX 378 BREMERTON, WA 98337	45-3703034	501(C)(3)	10,000.	0.			OPERATIONS AND SUPPORT.
SIFF 305 HARRISON STREET SEATTLE, WA 98109	91-1489660	501(C)(3)	12,150.	0.			OPERATIONS AND SUPPORT.

Part II **Continuation of Grants and Other Assistance to Governments and Organizations in the United States** (Schedule I (Form 990), Part II.)

(a) Name and address of organization or government	(b) EIN	(c) IRC section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
UNIVERSITY OF WASHINGTON PO BOX 24967 SEATTLE, WA 98195	91-1486484	501(C)(3)	12,161.	0.			OPERATIONS AND SUPPORT.
ST. VINCENT DE PAUL CONFERENCE OF OUR LADY STAR OF THE SEA - 1137 NORTH CALLOW AVENUE - BREMERTON, WA 98312	91-0635027	501(C)(3)	8,504.	0.			OPERATIONS AND SUPPORT.
TOWN HALL 720 SENECA ST, SUITE A SEATTLE, WA 98101	91-1910904	501(C)(3)	8,200.	0.			OPERATIONS AND SUPPORT.
WASHINGTON STATE UNIVERSITY PO BOX 641035 PULLMAN, WA 99164	91-6001108	501(C)(3)	26,750.	0.			OPERATIONS AND SUPPORT.
YMCA OF PIERCE & KITSAP COUNTIES 3909 NW RANDALL WAY SILVERDALE, WA 98383	91-0565562	501(C)(3)	5,500.	0.			OPERATIONS AND SUPPORT.
ACADEMY CHAMBER ORCHESTRA 9510 20TH AVE NE SEATTLE, WA 98115	91-1755553	501(C)(3)	8,013.	0.			OPERATIONS AND SUPPORT.
BOYS & GIRLS CLUBS OF SOUTH PUGET SOUND - 3875 SOUTH 66TH STREET, STE 101 - TACOMA, WA 98409	91-0759832	501(C)(3)	7,000.	0.			OPERATIONS AND SUPPORT.
BREMERTON BACKPACK BRIGADE PO BOX 2533 BREMERTON, WA 98310	47-3779347	501(C)(3)	7,200.	0.			OPERATIONS AND SUPPORT.
ISLAND TIME ACTIVITIES PO BOX 10822 BAINBRIDGE ISLAND, WA 98110	91-0930965	501(C)(3)	40,000.	0.			OPERATIONS AND SUPPORT.

Part II **Continuation of Grants and Other Assistance to Governments and Organizations in the United States** (Schedule I (Form 990), Part II.)

(a) Name and address of organization or government	**(b)** EIN	**(c)** IRC section if applicable	**(d)** Amount of cash grant	**(e)** Amount of non-cash assistance	**(f)** Method of valuation (book, FMV, appraisal, other)	**(g)** Description of non-cash assistance	**(h)** Purpose of grant or assistance
KINGSTON CHRISTIAN CHURCH PO BOX 31 KINGSTON, WA 98346	91-0977447	501(C)(3)	12,000.	0.			OPERATIONS AND SUPPORT.
KITSAP COMMUNITY RESOURCES 845 8TH STREET BREMERTON, WA 98337	91-0791411	501(C)(3)	12,000.	0.			OPERATIONS AND SUPPORT.
KITSAP IMMIGRANT ASSISTANCE CENTER PO BOX 1276 BREMERTON, WA 98337	75-3182528	501(C)(3)	7,500.	0.			OPERATIONS AND SUPPORT.
KITSAP PUBLIC HEALTH DISTRICT 345 6TH STREET, STE 300 BREMERTON, WA 98337	42-1689063	501(C)(3)	5,994.	0.			OPERATIONS AND SUPPORT.
MARTHA & MARY PO BOX 127 POULSBO, WA 98370	91-0567265	501(C)(3)	5,250.	0.			OPERATIONS AND SUPPORT.
NEW LIFE COMMUNITY DEVELOPMENT AGENCY - 725 PARK AVENUE - BREMERTON, WA 98337	48-1272428	501(C)(3)	15,000.	0.			OPERATIONS AND SUPPORT.
OLYMPIC COLLEGE FOUNDATION 1600 CHESTER AVE BREMERTON, WA 98337	91-1595274	501(C)(3)	10,000.	0.			OPERATIONS AND SUPPORT.
OUR LADY STAR OF THE SEA SCHOOL 1516 5TH STREET BREMERTON, WA 98337	91-0635027	501(C)(3)	12,000.	0.			OPERATIONS AND SUPPORT.
PORT ORCHARD ROTARY FOUNDATION PO BOX 616 PORT ORCHARD, WA 98366	91-1539867	501(C)(3)	13,712.	0.			OPERATIONS AND SUPPORT.

Part II **Continuation of Grants and Other Assistance to Governments and Organizations in the United States** (Schedule I (Form 990), Part II.)

(a) Name and address of organization or government	(b) EIN	(c) IRC section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
SUQUAMISH FOUNDATION PO BOX 498 SUQUAMISH, WA 98392	03-0574998	501(C)(3)	21,000.	0.			OPERATIONS AND SUPPORT.
UNITED WAY OF KITSAP COUNTY 645 4TH STREET STE 101 BREMERTON, WA 98337	91-0623990	501(C)(3)	18,700.	0.			OPERATIONS AND SUPPORT.
WEST SOUND TREATMENT CENTER 4060 WHEATON WAY STE F BREMERTON, WA 98310	91-1184237	501(C)(3)	10,000.	0.			OPERATIONS AND SUPPORT.
GREAT PENINSULA CONSERVANCY 423 PACIFIC AVE SUITE 401 BREMERTON, WA 98337	91-1110978	501(C)(3)	69,200.	0.			OPERATIONS AND SUPPORT.
KITSAP AUDUBON SOCIETY PO BOX 961 POULSBO, WA 98370	91-1288921	501(C)(3)	16,000.	0.			OPERATIONS AND SUPPORT.
NORTH KITSAP FISHLINE PO BOX 1517 POULSBO, WA 98370	91-1244431	501(C)(3)	20,235.	0.			OPERATIONS AND SUPPORT.
SOUTH KITSAP HELPLINE 1012 MITCHELL AVE PORT ORCHARD, WA 98366	91-1117868	501(C)(3)	10,066.	0.			OPERATIONS AND SUPPORT.

Part III **Grants and Other Assistance to Domestic Individuals.** Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of non-cash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance

Part IV **Supplemental Information.** Provide the information required in Part I, line 2; Part III, column (b); and any other additional information.

PART I, LINE 2:

KITSAP COMMUNITY FOUNDATION DISBURSES GRANTS AND SCHOLARSHIP FUNDS TO ORGANIZATIONS AND INDIVIDUALS BASED ON ELIGIBILITY. THE BOARD IS RESPONSIBLE FOR APPROVING THE DISBURSEMENT OF FUNDS AND MONITORING THE USE OF THE FUNDS TO ENSURE THEY ARE USED FOR THEIR INTENDED PURPOSE.

SCHEDULE M (Form 990)

Department of the Treasury
Internal Revenue Service

Noncash Contributions

▶ Complete if the organizations answered "Yes" on Form 990, Part IV, lines 29 or 30.
▶ Attach to Form 990.
▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2018

Open to Public Inspection

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number: 94-3205217

Part I Types of Property

		(a) Check if applicable	(b) Number of contributions or items contributed	(c) Noncash contribution amounts reported on Form 990, Part VIII, line 1g	(d) Method of determining noncash contribution amounts
1	Art - Works of art				
2	Art - Historical treasures				
3	Art - Fractional interests				
4	Books and publications				
5	Clothing and household goods				
6	Cars and other vehicles				
7	Boats and planes				
8	Intellectual property				
9	Securities - Publicly traded				
10	Securities - Closely held stock	X	1	15,050.	FMV
11	Securities - Partnership, LLC, or trust interests				
12	Securities - Miscellaneous				
13	Qualified conservation contribution - Historic structures				
14	Qualified conservation contribution - Other				
15	Real estate - Residential				
16	Real estate - Commercial				
17	Real estate - Other				
18	Collectibles				
19	Food inventory				
20	Drugs and medical supplies				
21	Taxidermy				
22	Historical artifacts				
23	Scientific specimens				
24	Archeological artifacts				
25	Other ▶ ( )				
26	Other ▶ ( )				
27	Other ▶ ( )				
28	Other ▶ ( )				

29 Number of Forms 8283 received by the organization during the tax year for contributions for which the organization completed Form 8283, Part IV, Donee Acknowledgement 29

			Yes	No
30a	During the year, did the organization receive by contribution any property reported in Part I, lines 1 through 28, that it must hold for at least three years from the date of the initial contribution, and which isn't required to be used for exempt purposes for the entire holding period?	30a		X
b	If "Yes," describe the arrangement in Part II.			
31	Does the organization have a gift acceptance policy that requires the review of any nonstandard contributions?	31		X
32a	Does the organization hire or use third parties or related organizations to solicit, process, or sell noncash contributions?	32a		X
b	If "Yes," describe in Part II.			
33	If the organization didn't report an amount in column (c) for a type of property for which column (a) is checked, describe in Part II.			

Part II **Supplemental Information.** Provide the information required by Part I, lines 30b, 32b, and 33, and whether the organization is reporting in Part I, column (b), the number of contributions, the number of items received, or a combination of both. Also complete this part for any additional information.

SCHEDULE O (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.
▶ Attach to Form 990 or 990-EZ.
▶ Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047
2018
Open to Public Inspection

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number: 94-3205217

FORM 990, PART I, LINE 1, DESCRIPTION OF ORGANIZATION MISSION:

COMMUNITY.

FORM 990, PART VI, SECTION B, LINE 11B:

A DRAFT COPY OF FORM 990 IS REVIEWED BY THE FULL BOARD BEFORE IT IS FILED.

FORM 990, PART VI, SECTION B, LINE 12C:

THE ORGANIZATION MONITORS THE CONFLICT OF INTEREST POLICY BY INFORMING THE BOARD CHAIR OF POTENTIAL CONFLICTS IDENTIFIED IN ANY MEMBER'S ANNUAL CONFLICT OF INTEREST STATEMENT. ENFORCEMENT OF THE POLICY IS DELEGATED TO THE CHAIR AND VICE-CHAIR OF THE BOARD. IN ALL CASES WHERE THERE IS AN ACTUAL CONFLICT, THE AFFECTED BOARD MEMBER WILL NOT VOTE ON THE MATTER. IN ADDITION, THE ISSUE MAY BE REFERRED TO LEGAL COUNSEL AND/OR THE ENTIRE BOARD OF DIRECTORS.

FORM 990, PART VI, SECTION B, LINE 15:

COMPENSATION IS DETERMINED BASED ON COMPARABLE POSITIONS IN THE LOCAL NONPROFIT COMMUNITY AND SIMILAR SIZED COMMUNITY FOUNDATIONS NATIONALLY.

FORM 990, PART VI, SECTION C, LINE 18:

FORM 990 IS AVAILABLE TO THE PUBLIC ON THE ORGANIZATION'S WEBSITE.

FORM 990, PART VI, SECTION C, LINE 19:

THE FOUNDATION MAKES ITS GOVERNING DOCUMENTS, CONFLICT OF INTEREST POLICY AND AUDITED FINANCIAL STATEMENTS AVAILABLE ON THE ORGANIZATION'S WEBSITE.

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number: 94-3205217

FORM 990, PART IX, LINE 11G, OTHER FEES:

OUTSIDE CONTRACTORS:

PROGRAM SERVICE EXPENSES	307,856.
MANAGEMENT AND GENERAL EXPENSES	0.
FUNDRAISING EXPENSES	0.
TOTAL EXPENSES	307,856.
TOTAL OTHER FEES ON FORM 990, PART IX, LINE 11G, COL A	307,856.

FORM 990, PART XII, LINE 2C:

NO CHANGES FROM PRIOR YEAR.

SCHEDULE R (Form 990)

Department of the Treasury Internal Revenue Service

Related Organizations and Unrelated Partnerships

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37.
▶ Attach to Form 990.
▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2018

Open to Public Inspection

Name of the organization: KITSAP COMMUNITY FOUNDATION

Employer identification number: 94-3205217

Part I **Identification of Disregarded Entities.** Complete if the organization answered "Yes" on Form 990, Part IV, line 33.

(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity
KITSAP STRONG CONSULTING LLC - 83-2129766 PO BOX 3670 SILVERDALE, WA 98383	IMPROVE THE HEALTH & WELL-BEING OF CHILDREN, FAMILIES & ADULTS IN KITSAP	WASHINGTON	46,683.	-14,317.	KITSAP COMMUNITY FOUNDATION

Part II **Identification of Related Tax-Exempt Organizations.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related tax-exempt organizations during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity? Yes	No

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule R (Form 990) 2018

SEE PART VII FOR CONTINUATIONS

Part III **Identification of Related Organizations Taxable as a Partnership.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations? Yes	No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	No	(k) Percentage ownership

Part IV **Identification of Related Organizations Taxable as a Corporation or Trust.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership	(i) Section 512(b)(13) controlled entity? Yes	No

Part V Transactions With Related Organizations. Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

Note: Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.		Yes	No
1 During the tax year, did the organization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?			
a Receipt of **(i)** interest, **(ii)** annuities, **(iii)** royalties, or **(iv)** rent from a controlled entity	1a		
b Gift, grant, or capital contribution to related organization(s)	1b		
c Gift, grant, or capital contribution from related organization(s)	1c		
d Loans or loan guarantees to or for related organization(s)	1d		
e Loans or loan guarantees by related organization(s)	1e		
f Dividends from related organization(s)	1f		
g Sale of assets to related organization(s)	1g		
h Purchase of assets from related organization(s)	1h		
i Exchange of assets with related organization(s)	1i		
j Lease of facilities, equipment, or other assets to related organization(s)	1j		
k Lease of facilities, equipment, or other assets from related organization(s)	1k		
l Performance of services or membership or fundraising solicitations for related organization(s)	1l		
m Performance of services or membership or fundraising solicitations by related organization(s)	1m		
n Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1n		
o Sharing of paid employees with related organization(s)	1o		
p Reimbursement paid to related organization(s) for expenses	1p		
q Reimbursement paid by related organization(s) for expenses	1q		
r Other transfer of cash or property to related organization(s)	1r		
s Other transfer of cash or property from related organization(s)	1s		

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

	(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

Part VI **Unrelated Organizations Taxable as a Partnership.** Complete if the organization answered "Yes" on Form 990, Part IV, line 37.

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization. See instructions regarding exclusion for certain investment partnerships.

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners sec. 501(c)(3) orgs.? Yes	(e) No	(f) Share of total income	(g) Share of end-of-year assets	(h) Dispropor-tionate allocations? Yes	(h) No	(i) Code V-UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) No	(k) Percentage ownership

Schedule R (Form 990) 2018

Part VII Supplemental Information.

Provide additional information for responses to questions on Schedule R. See instructions.

PART I, IDENTIFICATION OF DISREGARDED ENTITIES:

NAME OF DISREGARDED ENTITY:

KITSAP STRONG CONSULTING LLC

PRIMARY ACTIVITY: IMPROVE THE HEALTH & WELL-BEING OF CHILDREN, FAMILIES & ADULTS IN KITSAP CTY

EXHIBIT B

KITSAP COMMUNITY FOUNDATION

Search Site

COMMUNITY ADVISORS DONORS NONPROFITS KITSAP GREAT GIVE ABOUT FUND LOGIN EVENTS

About

Kitsap Community Foundation is a 501(c)(3) organization, working to create an equitable, sustainable culture of philanthropy in our community.

Vision

The Kitsap Community Foundation envisions a community with a vibrant culture of philanthropy that maximizes the work of thriving nonprofits.

Mission

Our mission is to improve our community's quality of life by connecting people who care with causes that matter. We realize our mission through:

1. Increasing the culture of philanthropy in our community;
2. Building a large endowment and making grants to our community's nonprofits;
3. Strengthening the nonprofit sector in our community; and
4. Contributing to positive social change through civic engagement and leadership.

Who We Are

History

In January 1993, a small group of concerned citizens met to discuss ways to raise money for local schools. From this meeting, Leslie Barry Connors, Dr. Heather Carrell, Claudia Fogle and Jane Ritley began researching their options. They believed the problems facing education could be directly linked to the many problems society itself is struggling with. In order to truly benefit children, the problems must be attacked in the broadest sense. This is where the idea of forming a Community Foundation emanated. The founders and subsequent Board Members of Kitsap Community Foundation (KCF) saw that a Community Foundation could serve to not only provide support to address community issues, but that it would serve to assist those committed to philanthropy to provide for community needs in perpetuity through endowments. As a Community Foundation, we see it as our job to be actively involved in our community. We don't just help others invest in our community, we also work as an active force to make Kitsap a more resilient, healthy, strong community. From teaching nonprofits, to creating Kitsap Strong, our poverty alleviation project, we are always working to find ways we can uplift and strengthen Kitsap.

KCF prides itself in its donor/investor program, providing a high degree of personalized customer service. With over 100 funds and $12M in assets under management (and growing), this non-profit 501(c)(3) is dedicated to improving the quality of life locally by building grant making endowments. The organization maintains its local focus through its leadership and grant making, while simultaneously providing effective vehicles to support philanthropy locally, regionally, nationally, and internationally. With the support of our donor/investors, more than $6.5M in grants, contr butions, and scholarships have been made through the foundation since 1999.

KCF has had a rich history of volunteerism, which continues today to support the Mission of the organization. A full-time Executive Director and two part-time staff members support the foundation.

Since 2003, the KCF Board of Directors has been committed to meeting strict national standards for community foundations by becoming a member of the Council on Foundations (COF). In January 2007, the COF certified KCF as having met the very rigorous National Standards for U.S. Community Foundations for operational quality, integrity, and accountability.

What We Do

Our Focus

Our Objectives

Board of Directors

Standing Committees

Volunteers

STAFF

KOL MEDINA, J.D.
President & CEO

SHAINE SCHRAMLING
Funds & Grants Officer

GRETCHEN RITTER-LOPATOWSKI
Creative & Marketing Officer

HOURS

Monday - Friday: 8 - 4

DONATE NOW

ADDRESS

Physical:
9657 Levin Rd
Suite 220
Silverdale, WA 98383
Mailing:
PO Box 3670
Silverdale, WA 98383

CONNECT

360.698.3622
info@kitsapfoundation.org

Like 120 Share
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SUBSCRIBE

Nonprofit Mailing List

First and Last Name

Organization

Email

Subscribe Now

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COMMUNITY ADVISORS DONORS NONPROFITS KITSAP GREAT GIVE ABOUT FUND LOGIN EVENTS

Cornerstone Society

These donors are the base on which all of the Foundation's operations are built. It's a group of people dedicated to improving our community by annually donating at least $1,000 to help the Foundation grow philanthropy throughout the County. We quite literally turn these donations into hundreds of thousands of dollars for local nonprofit organizations. Please contact Kol at 360.698.3622 Or kol@kitsapfoundation.org for information about joining this prestigious society.

Join The Society Now

Anonymous (1)
Richard Asche
AnitaCarole Aughnay
Ruth Bernstein
Peter & Marty Braun
Whitney Koontz & Mike Brown
Patrick Callahan & Karen Ki bane
Jacqueline Cohn
Leo Culloo
Rick & Janna Darrow
David & Katherine De Bruyn
Carter & Tori Dotson
Margee Duncan & Bill Baird
Ann Wilkinson Ellis & John Ellis
David Emmons
Steven & Betty Fabry
Eric Fredricks
Ray & Charlotte Garrido
Evelyn Ghiselin
Steve & Marti Green
Elizabeth Wrenn & Stuart Grogan
Michelle & AJ Hill
Steve & Debbie Hill
Tom & Marcia Kilbane
Bev & Cliff Kincaid
Gale Kirsopp
Betty Krueger
Adele & Kevin LaCombe
Frank Leach
Juliet & Phil LeDorze
Dorothea & Ralph Lintz
Debbie & Wayne Macomber
Clif & Kathy McKenzie
Kol Medina & Elsa Watson
Eileen Montgomery
Donna & Josh Moreland
Patty & Bob Murphy
Bill & Vivi-Ann Parnell
Chris Placentia
Jerry & Nancy Reid
Chris Rieland
Jay Roof
Jon Rose
Joe & Amy Roszak
David & Rebecca Schultz
Cynthia Sears
Laurie & Pankaj Sharma
Ceci Sittser
Lisa & Steve Stirrett
Chung Nguyen & Oanh Truong
William & Sandra Walgren
Carol Watson
Dave & Ann Wetter
Brian & Kate Wicks
Chris Wurden & Irene Wurden

HOURS

Monday - Friday: 8 - 4

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Foundation Ambassadors

The most valuable publicity we could have is from our community members that are satisfied with the way we have helped them reach out to their community and support causes that matter to them. We are proud to have a dedicated group of ambassadors for our Foundation that are willing to share with others how we have served their desire to improve our community and leave a legacy of generosity.

Current Ambassadors

Carole Aughnay
Cary Bozeman, Port of Bremerton Commissioner
Peter Braun, Orchard Foods
Mike Brown, FPH Construction, Inc.
Dee Coppola, Wet Apple Media
Kevin Cure Sanchez, Mitchell, Eastman & Cure, PSC
Tracy DiGiovanni, Shiers Law Firm
Dorothy Foster, Foster Law Group
Michelle Hill, Bankrock Corporation
Frank Leach, RE/MAX Platinum Services
Donna Moreland
Ardis Morrow
John Powers, Kitsap Economic Development Alliance
Jon Rose, Olympic Property Group
Laurie Sharma
Ron Templeton, Templeton Horton Weibel & Broughton, PLLC
Brad Weiner, UBS Financial Services

HOURS

Monday - Friday: 8 - 4

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Physical:
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EXHIBIT C

AGREEMENT FOR PROFESSIONAL SERVICES
Suzuki Property, Bainbridge Island, Washington

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is entered into between the City of Bainbridge Island, a Washington State municipal corporation ("City"), and OPG New Brooklyn LLC, a Washington State limited liability company ("Consultant").

WHEREAS, the City owns an approximately 13.83-acre parcel of real property commonly known as the Suzuki property, which is legally described on **Attachment A** ("Property") and is located in the City of Bainbridge Island, Kitsap County, Washington; and

WHEREAS, the Property is zoned R-2, which allows residential development at a maximum base density of two units per acre, for a total of approximately 30 units within the Property; and

WHEREAS, the Property is subject to potential increase by a factor of 2.5 under the City's Housing Design Demonstration Program ("HDDP"), which would allow a maximum residential density of five units per acre, for a total of approximately 75 units within the Property, if certain HDDP requirements are met; and

WHEREAS, the Property also contains potential wetlands, wildlife habitat, and other natural areas valuable for conservation and preservation; and

WHEREAS, on January 23, 2018, the City Council adopted Resolution No. 2018-03, which directed the City Manager to negotiate an agreement for the purpose of completing all necessary work required for permits, approvals, and development of the Property; and

WHEREAS, Resolution No. 2018-03 names six goals that must be incorporated into the development services agreement; and

WHEREAS, the City needs professional services in connection with the development, as well as the preservation, of certain portions of the Property; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services described on **Attachment B** ("Consultant Services"), which includes managing and directing the third party consultants whose services are described on **Attachment C** ("Third Party Services"), in order to assist the City in obtaining the City's preliminary plat approval of the subdivision of the Property as part of the real property development project that is described on **Attachment D** ("Project"). The Consultant shall furnish or engage as Third Party Services all labor to conduct and complete the Consultant Services, except as specifically noted otherwise in this Agreement.

2. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect for fifteen (15) months or until terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party.

C. In the event of expiration or termination, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be paid for any work completed and any expenses actually incurred prior to the effective date of expiration or termination in accordance with **Attachment E**.

3. PAYMENT

A. The City shall pay the Consultant for the Consultant Services and reimburse any third party or City expenses actually incurred by the Consultant in providing the Consultant Services in accordance with **Attachment E**.

B. The Consultant shall submit, in a format acceptable to the City, monthly invoices for Consultant Services performed and expenses incurred in the previous calendar month. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. The City shall pay all invoices by mailing a City check to the Consultant within sixty (60) days after receipt of a proper invoice from the Consultant.

D. If the Consultant Services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the Consultant Services to comply with this Agreement. The City may withhold payment for such Consultant Services until the Consultant Services meet the requirements of this Agreement.

4. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses incurred by the Consultant and reimbursable by the City under this Agreement in accordance with generally accepted accounting principles. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records if necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

5. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the Consultant Services is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the Consultant Services. The Consultant shall make no claim of City employment nor shall the Consultant claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement.

C. If required by applicable law, the Consultant shall obtain a business license and pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

6. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda, and other documents developed by the Consultant under this Agreement, whether finished or not, shall become the property of the City and shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all Consultant Services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the errors or omissions, or the negligent or allegedly negligent acts, or the intentional misconduct or allegedly intentional misconduct, of the Consultant in performance of this Agreement, except to the extent caused by the negligence or intentional misconduct of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend hereunder, shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify, and/or invalidate any of these covenants of indemnification.

D. Nothing contained in this Agreement shall be construed to create a liability or a right of indemnification in any third party.

10. INSURANCE

The Consultant shall maintain insurance as follows:

[X] Commercial General Liability as described in **Attachment F**.
[X] Professional Liability as described in **Attachment F**.
[X] Automobile Liability as described in **Attachment F**.
[X] Workers' Compensation as described in **Attachment F**.
[ ] None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including without limitation that certain letter dated September 12, 2017, from OPG Properties LLC (d/b/a Olympic Property Group), an affiliate of the Consultant, to Doug Schulze of the City. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NONWAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: City of Bainbridge Island
280 Madison Avenue North

Bainbridge Island, WA 98110
Attention: City Manager

To the Consultant: OPG New Brooklyn LLC
19950 7^{TH} Avenue N.E., Suite 200
Poulsbo, WA 98370
Attention: Jon Rose, President

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

21. SCOPE OF THIRD PARTY SERVICES

The City hereby approves the description and scope of Third Party Services comprising **Attachment C** hereto.

22. PRELIMINARY PROJECT BUDGET

The City hereby approves the preliminary Project budget that is **Attachment G** hereto ("Preliminary Budget").

23. RIGHT OF ENTRY

The Consultant and its agents, contractors, employees, and third party consultants shall have the right to enter the Property during the term of this Agreement to perform Consulting Services and Third Party Services, including due diligence studies and investigations of the Property. The Consultant represents and warrants that it has kept and will keep the Property free and clear of any liens asserted against the City and the Property as a result of any such entry and investigation activities. The Consultant shall not disturb, remove, or sample any soils or groundwater within the Property unless the City first has reviewed and approved the Consultant's proposed scope of work in the City's commercially reasonable discretion in advance thereof. The Consultant shall repair any damage done to the Property in testing or inspecting the Property. The Consultant shall defend (with counsel approved by the City), indemnify, and hold the City, its employees, and officials harmless from and against any and all awards, claims, costs, damages, judgments, lawsuits, liabilities, and losses (including, without limitation, for reasonable attorneys' fees) arising from or relating to Consultant's entry upon and inspections and testing of the Property under this Agreement. Consultant's obligations under this section shall survive the expiration or termination of this Agreement.

24. ATTORNEYS' FEES

In the event any legal proceeding is commenced to enforce or interpret any provision of this Agreement or for breach of any provision of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses incurred by the prevailing party (including its attorneys' fees, expert witness' fees, and disbursements) at trial or on appeal.

25. STANDARD OF CARE

The Consultant shall execute its obligations under this Agreement in a professional and workmanlike manner, in accordance with the appropriate standards of care required of prudent, experienced, and skillful land development consultants doing business in Kitsap County, Washington, using industry standard practices appropriate for the scope and nature of the Consultant Services.

26. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary set forth herein, in no event shall the Consultant's liability to the City under this Agreement exceed the amount of insurance coverage available to the Consultant under the insurance policies that the Consultant is required to maintain under this Agreement. The Consultant shall have no liability for any claims, damages, or losses of the City arising from or relating to delays by the City or other events beyond the reasonable control of the Consultant.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the later of the signature dates included below.

OPG NEW BROOKLYN LLC

Date: 07/13/18

By:

Name JON ROSE

Title PRESIDENT

Tax I.D. # 83-1304702

City Bus. Lic. #

CITY OF BAINBRIDGE ISLAND

Date: June 14, 2018

By:

Douglas Schulze, City Manager

ATTACHMENTS:

A	-	Legal Description of the Property
B	-	Scope of Consultant Services
C	-	Third Party Services
D	-	Project Description
E	-	Compensation of Consultant
F	-	Insurance Requirements
G	-	Preliminary Budget

ATTACHMENT A
LEGAL DESCRIPTION OF THE PROPERTY

That portion of the North half of the Northwest quarter of the Southeast quarter, Section 22, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington, lying East of Permanent Highway No. 13;

Except the North 30 feet conveyed to Kitsap County for road by deed recorded under Auditor's File No. 777166;

And except that portion conveyed for right-of-way for roadways known as NE New Brooklyn Road and Sportsman Club Road NE (Permanent Highway No. 13) by right of way deed and slope easement recorded under Auditor's File No. 201204090289;

Situate in the City of Bainbridge Island, Kitsap County, Washington.

APN/Parcel ID: 222502-4-006-2005

ATTACHMENT B
SCOPE OF CONSULTANT SERVICES

The Consultant Services comprise the following:

1. Advising the City. The Consultant will advise the City in its capacity as the owner of the Property for a period of fifteen (15) months regarding the potential development, subdivision, SEPA environmental review, conservation, and disposition of the Property consistent with the Project description that is **Attachment D** hereto.

2. Managing and Directing Third Party Services. For a period of fifteen (15) months, the Consultant will manage and direct the efforts of the third party architects, engineers, and other consultants who will provide the Third Party Services that are described on **Attachment C** hereto in connection with the Project description that is **Attachment D** hereto, which include without limitation: (a) submitting to the City in its capacity as local government agency a complete application for SEPA environmental review and the preliminary plat approval of the Property; (b) preparing for, attending, and offering Project presentations at two (2) public community meetings in addition to the minimum number of public community meetings required by applicable City ordinances; and (c) seeking the approval of the preliminary plat application by the City in its capacity as a local government agency, subject to the City's exercise of its authority as a local government agency to determine the conditions and terms of such preliminary plat approval.

Under this Agreement, the Consultant is primarily an advisor and consultant to the City and a manager of third party consultants. The Consulting Services do not include acting as the agent or representative of the City in any capacity except to the extent expressly agreed by the City and the Consultant in writing.

The Consultant intends to take the Project from current concept to preliminary plat approval, subject to the approval of the City. There are two general stages to the Consultant's work:

A. Predesign. This portion of the work includes all the research, meetings, legal, and professional services provided by the Consultant and its affiliates between the date the City requested a proposal specifically from the Consultant or its affiliates and the date of this Agreement.

B. Preliminary Plat Approval. This portion of the work will occur between the date of this Agreement and the date of preliminary project approval.

The Consultant Services do not include responding to any appeals or providing services that are not included in the Third Party Services described on **Attachment C** and accounted for in the

Preliminary Budget shown on **Attachment G**.

ATTACHMENT C
THIRD PARTY SERVICES

(See attached pages for complete descriptions of Third Party Services to be provided by the following third party consultants:)

NAME OF THIRD PARTY CONSULTANT	THIRD PARTY SERVICES	DATE
Adam Goldsworthy Oak	Preliminary Plat	03/28/18
Adam Goldsworthy Oak	Survey	04/09/18
Aspect Consulting	Phase 1 Environmental & Geotech	04/09/18
BGE Environmental	Wetlands Delineation	03/23/18
Katy Bigelow	Arborist	11/24/17
Browne Wheeler Engineers	Civil Engineer	03/28/18
Davis Studio Architecture + Design	Architect	03/15/18
Fischer Bouma	Landscape Architect	03/28/18
KPG	Traffic Impact Analysis	03/01/18

ATTACHMENT D
PROJECT DESCRIPTION

Note: The Consultant Services do not include services required by the City after the date on which the City Hearing Examiner issues a decision on the application for preliminary plat approval of the Property, including without limitation responding to appeals, satisfying the conditions of preliminary plat approval, constructing infrastructure, obtaining final plat approval, constructing buildings and other improvements, and marketing the Project, so the Consultant Services do not include ensuring the completion of Project elements that may be described on this ***Attachment D*** *but that are not required before preliminary plat approval.*

The Project is a residential development located within the Property, a 13.83-acre site in the City of Bainbridge Island. The Property fronts NE New Brooklyn Road and Sportsman Club Road Northeast. The Project will use approximately 4.2 acres of development area within the 13.83-acre site. The goals of the Project are to provide more low-income housing on Bainbridge Island and to protect most of the Property from development in perpetuity. In addition, the six goals specified in City of Bainbridge Island Resolution No. 2018-03, dated January 23, 2018, are hereby incorporated into this **Attachment D** to the Agreement as part of the project description.

The Project uses the Housing Design Demonstration Program ("HDDP") to increase density, for a total of up to 75 residential units if the Project meets HDDP requirements. It is anticipated that the Project will use HDDP Tier 3, which allows up to two and one-half times (2.5x) the base density.

As currently proposed, upon final plat approval and the completion of infrastructure and building construction, the Project will consist of eighteen (18) single-family residential lots and forty-two (42) residential townhome units. Parking will be provided in an open and central parking configuration. None of the proposed residential units will contain garages, and many of the units will not front directly on the common parking areas. All driveways and parking areas will be privately owned and maintained by a nonprofit homeowners association. There will be up to two (2) landscaped green spaces and hard-surface walking paths within the development area, for the use and enjoyment of the Project's residents, which will be owned by the homeowners association.

This description may be modified during the design process before preliminary plat approval to account for the realities of topography, engineering, tree retention, and the desires of the purchasers of the lots.

As currently proposed, storm water quality will be treated by rain gardens. Peak storm water flows will be controlled through the use of underground detention pipes and a control structure. The use of low impact development techniques will be investigated as a potential substitute for the underground vault/control structure.

At the time of final plat approval, the portion of the Property that is located outside the development area will become an open space tract to be left natural, with the only potential improvements to be unpaved walking trails. A conservation easement or restrictive covenant will be recorded that prohibits housing or other development of this area in perpetuity. Ownership of the open space tract will either stay with the City of Bainbridge Island or be transferred by the City to another government agency, nonprofit conservation organization, or the homeowners association. A set of conditions, covenants, and restrictions ("CC&R's") will be prepared and recorded against the Property at the time of final plat approval and final plat recording. The CC&R's will outline homeowner and association rights and responsibilities.

Based upon preliminary research, the parties believe the required offsite improvements that will have to be completed or bonded between preliminary plat approval and final plat approval will be as follows:

- A single Project vehicle approach lane;
- A gravity sewer extension in NE New Brooklyn Road to Three Tree Lane NE; and
- Two water connections to the existing water main on NE New Brooklyn Road.

No other off-site road, storm, or other infrastructure improvements are anticipated.

ATTACHMENT E
COMPENSATION OF CONSULTANT

A. Monthly Fee Plus Reimbursement of Expenses. Until this Agreement expires or is terminated, and thereafter with respect to work completed and expenses incurred prior to the effective date of expiration or termination, the City shall pay the Consultant the "Monthly Fee" and any "Monthly Reimbursement of Actual Expenses for Third Party Services and City Permit Fees" described below, up to an aggregate total not exceeding the amount of the "Fixed Fee" defined in Part B below:

1. Monthly Fee. A monthly fee for the Consultant's overhead expenses and its compensation or profit in the total monthly amount of $17,267.33.
2. Monthly Reimbursement of Actual Expenses for Third Party Services and City Permit Fees. All third party and City expenses incurred by the Consultant in providing the Consultant Services, including without limitation the Third Party Services and City construction, environmental, land use, and subdivision application, review, and permit fees.

B. Fixed Fee. The Fixed Fee for the Consultant Services provided until the date on which the City Hearing Examiner issues a decision on the application for preliminary plat approval of the Property shall be the sum of $796,600, subject to the following potential adjustments:

1. Expenses Not Included in Preliminary Budget and Third Party Services. The parties acknowledge and agree that the City's review of the Project and the application materials submitted to the City by the Consultant, together with the City's evaluation of any public comments received by the City regarding the Project and application materials, may cause the City to require the Consultant Services, including without limitation the Third Party Services, to expand. The parties also acknowledge and agree that the City and its staff may, during the course of the Project, make decisions and take other actions that increase the cost of completing the Consultant Services. Therefore, the Fixed Fee shall be increased by the amount of all third party and City expenses incurred by the Consultant in providing the Consultant Services to the extent that the expenses and services are required in order for the Consultant to satisfy the requirements of the City as they may be established after the making of this Agreement, if the expenses and services are not included within the Third Party Services described on **Attachment C** and within the Preliminary Budget attached as **Attachment G.**

2. <u>Extension of Term Through No Fault of the Consultant</u>. The Fixed Fee shall be increased by a reasonable amount, to be mutually agreed upon by the parties in writing, for each month that the Consultant continues to provide the Consultant Services after the initial fifteen (15) months of the term of this Agreement unless the reason the Consultant Services have not been completed within fifteen (15) months after the making of this Agreement is because of the negligence or intentional misconduct of the Consultant.

ATTACHMENT F
INSURANCE REQUIREMENTS

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap liability, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit, as applicable.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Before commencing the Consultant Services, the Consultant shall provide to the person identified in Section 8 of this Agreement a Certificate of Insurance evidencing the required insurance. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to request and receive a certified copy of all required insurance policies.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

K. Subconsultants' Insurance

The Consultant shall cause each and every Subconsultant to provide insurance coverage that complies with all applicable requirements of the Consultant-provided insurance as set forth herein, except the Consultant shall have sole responsibility for determining the limits of coverage required to be obtained by Subconsultants. The Consultant shall ensure that the City is an additional insured on each and every Subconsultant's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

ATTACHMENT G
PRELIMINARY BUDGET

COST PROFORMA THRU PRELIMINARY PLAT

		Total	Pre-Design	Preliminary Approval	Comments
Soft Costs					
Architect		$191,325	$11,325	$180,000	Davis Studio Proposal + costs incurred
Civil		$22,821	$3,321	$19,500	Browne Wheeler Proposal + costs incurred
Landscape Architect		$40,000		$40,000	Fischer Bouma Proposal
Geo Tech (Structural, LID)		$13,500		$13,500	Aspect Consulting Proposal
Surveyor (Boundary, Topo, Tree)		$24,250		$24,250	AGO Land Surveying Proposal
Preliminary Plat		$5,000		$5,000	AGO Land Surveying Proposal
Arborist (Hazard Trees, Inventory)		$2,125		$2,125	Katy Bigelow, Arborist Proposal
Environmental - Lvl 1.		$5,000		$5,000	Aspect Consulting Proposal
Wetland		$6,400	$500	$5,900	BGE Environmental Proposal + costs incurred
Traffic		$21,295		$21,295	KPG, PS Proposal
Legal		$30,000	$24,000	$6,000	Davis Wright Tremain Proposal
OPG Overhead		$137,495	$24,999	$112,496	Estimate Based on OPG Experience
Soft Cost Subtotal		$499,211	$64,145	$435,066	
Contingency (15%)	15%	$74,882	$9,622	$65,260	Contingency
Soft Cost Total		$574,093	$73,767	$500,326	
City of Bainbridge Fees					
PreApp Conference		$256		$256	
Forest Practice Application		$1,500		$1,500	
Subdivision Fees		$86,063		$86,063	$17,363 fee, + fee of $1,145 per lot - based on 60 lots
Fees Subtotal		$87,819		$87,819	
Contingency (15%)	15%	$13,173		$13,156	Contingency
Fees Total		$100,992		$100,975	
Project Costs		$675,085	$73,767	$601,301	
Project Profit	18%	$121,515	$13,278	$108,234	
Total Project Costs + Profit		$796,600	$87,045	$709,535	

EXHIBIT D

VISCONSI
COMPANIES LTD
building your future on our history

February 18, 2019

Ms. Morgan Smith
City Manager for Bainbridge Island
City Council Members
280 Madison Ave. North
Bainbridge Island, WA 98110

Re: The January 29, 2019 Proposal to the City of Bainbridge Island for the relocation of the Police Station and Municipal Court to the Visconsi project

Dear Ms. Smith and respected City Council Members:

I am writing this letter in reference to the outcome of the city council meeting held on January 29th 2019 whereby our above proposal was briefly discussed. For more than four years, we have been making an effort to have our site included in the city's evaluation process for the relocation of the Police Station and Municipal Courts facility. Our initial submission goes back to July 2014 when we first learned of the city's desire to pursue this relocation. At that time (and multiple times since), we submitted proposals and requests to have our site included in the evaluation process only to get stonewalled by the then acting City Manager and Council Members. We've sent emails and made countless telephone calls to request to be allowed to make a presentation to City Council in an effort to communicate the many ways we could deliver a facility to the city in a timely and financially responsible way.

The last time we submitted a request to present in front of council was April 2018. Following that submittal, I received a voicemail from Koll Medina basically advising us that even if our site was a suitable location and made the most economic sense, that "City Council would not look at our project as a candidate based on the history of the project." This, despite the project having received unanimous approval from the hearing examiner. It was at that point, we felt it would just not be a productive use of our time and that we would never get a fair look, even if it was the best opportunity from a location and economic perspective for the City.

It wasn't until this past October when I was contacted by a few Bainbridge Island residents, including Councilman Ron Peltier, asking if we would still consider pursuing the Police Station and Municipal Court facility as part of our project. With our response being a yes, and with the obligation of the City and its Council Members to insure the residents are being properly represented, we were not provided, as one would normally expect, some of the basic information that would have allowed us to properly conduct our due diligence.

Instead, with four days' notice, we were asked to provide City Council a proposal based on a conceptual site plan we produced with no feedback from the City Council Members. We were never provided with any information that would have allowed us to provide the City with a detailed proposal. So, in an effort to try and please City Council, we did submit a proposal based on the information we had. This proposal was picked apart by a few of the City Council Members without the opportunity to defend or explain our position.

In listening to the live broadcast of a specially scheduled City Council meeting wherein the City Council was voting to ratify legislation to allow the City Manager to enter into a Purchase and Sale Agreement with the owners of the Franciscan building, I was shocked to hear some of the reasoning being given to the public why the city should pursue the plan being presented. I was equally surprised that council did not thoroughly vet out every possible opportunity, which is in the best interest of the constituents they represent. I also firmly believe, if given a fair chance to pursue this opportunity, we would have come in with an affordable budget and that budget would have been based on something the City designed versus a retrofit. As a side note, for the Council Member who voted against this, I don't think they were voting against this specific ordinance. I think they wanted to be sure before they casted their decision, that every possible opportunity was given a fair shake and properly vetted for the benefit of the public they serve.

In closing, I would ask again that all possible opportunities are considered before the city leaders of Bainbridge Island pass the point of no return. They and their fellow residents will be living with the outcome of these decisions for decades to come.

Sincerely,

VISCONSI COMPANIES, LTD.

Bradley A. Goldberg
Vice President of Development

EXHIBIT E

Council should stop project immediately | Letter to the editor

Friday, May 17, 2019 8:30am | LETTERS TO THE EDITOR OPINION

To the editor:

It seems apparent that four members of the Bainbridge Island City Council have not fully had the time to pour over the appraisal documents that supposedly support the purchase price of the Harrison clinic.

For anyone that does, they will be perplexed as to why the city continues to pursue acquisition of this building at a price which far exceeds its market value, as determined by its own experts. The various appraisals procured by the city, all of which are based on the presumption that the property will not be converted to a different use (at the instruction of the former manager Doug Schulz, who is no longer around to question as to the wisdom of this instruction), reveal a value range of $7,040,00 to $7,600,000, with the lower figure representing the most recent updated 2019 figure. Why then is the city paying close to $9 million this surely representing a gift of public funds to a private entity of nearly $2 million?

Perhaps the reason for the surcharge is the nearly year old appraisal prepared for the seller for "asset decision making purposes" at $9.7 million. If so, that is unfortunate, as the report does not stand up to full scrutiny as a reliable indication of market value of this property today.

The appraisal has two approaches to value. One, an income approach, rests on the assumption that the property could procure a premium rental value (from who?) at $40/square foot, while the general Kitsap market rent range shown is $20 to $26/sf. How is that done? Selection of a rental comparison from the I-5 corridor (Fife), and a supposedly confidential transaction in Poulsbo (kept secret for unknown reasons) at over $40/sf, this in a market where general medical space goes for around $20/sf or less.

So what about this mysterious 30,000- to 50,000-square-foot building in Poulsbo, that apparently garnered such a high rent? If accurately presented, it is likely there are many other considerations, like part ownership, and/or an expensive build-to-suit including a lot of specialized equipment and finishes.

If the city is going to base a $2 million surcharge on this report, Harrison should provide the information behind this rent comparable for further scrutiny. If this is a first generation, high improvement and part owner deal, it clearly does not apply to second generation space at a failed medical clinic location on Bainbridge. That assessment is supported by the city's own appraisals, which confirm much lower rental forecasts are more likely.

The second approach to value used by the Harrison procured appraisal is a sales approach, concluding to $550/square foot. This is done with two Kitsap sales at $363-365/sf, and two I-5 corridor sales (one in Bellevue and one in Federal Way) at $490-$515.

Does the city really feel this analysis is justified, such that they are willing to pay more for this building than a clinic in Bellevue, and a Federal Way clinic that happens to be a stone's throw away from St. Francis Hospital (not mentioned in the report)?

/

The city's purchase price for this property is an embarrassment and is not justified. It will set a high water mark for medical office space in Kitsap County, this completely unjustified for a clinic that Harrison has found it unprofitable to continue to operate. The property will sell for more than successful clinics located near hospitals and in Bellevue.

Our council members have the responsibility and obligation to stop this project in its tracks before island's taxpayers are committed to years of special tax assessment for a poor decision that is not supported by the facts.

This kind of decision should operate on the basis of "beyond a reasonable doubt," with a full majority council endorsement as compared to the reluctance so evidence in a 4-3 decision.

ANTHONY GIBBONS

Bainbridge Island

Kitsap Sun

BAINBRIDGE ISLANDER

Bainbridge considering eminent domain action to acquire police station site

Nathan Pilling Kitsap

Published 4:36 p.m. PT Apr. 11, 2018 | **Updated 5:35 p.m. PT Apr. 11, 2018**

BAINBRIDGE ISLAND – The city is mulling eminent domain action – or the threat of it – to acquire a site on New Brooklyn Road for its new police-municipal court facility while it moves forward with further analysis of the Harrison urgent care clinic site it has been considering in recent weeks.

The City Council approved moving forward with both sites with a 3-2 vote on Tuesday night. A proposal by council members Ron Peltier and Rasham Nassar to halt the planning process for the facility and create a citizen task force to help the city choose a site didn't gain traction, and members Kol Medina, Sarah Blossom and Joe Deets voted to move forward with the Harrison and New Brooklyn sites.

At the Harrison site, the vote means the city will pay consultant Coates Design about $41,000 to do more in-depth analysis of a retrofit there, on top of the $334,000 contract the city has had with the company for its work on the project since 2016.

CHI Franciscan has offered to sell its urgent care clinic off Madison Avenue to the city for its new police-municipal court facility, but Coates has reported previously that the two-story building would require significant retrofitting. With the city authorization, Coates will look to see how the city's programs would fit into the building and provide a cost estimate for work there. A preliminary estimate put a price tag for a police and court remodel there at $25.6 million, excluding acquisition costs.

CHI plans to maintain presence on Bainbridge

Medina said he favored the Harrison site and didn't want to use eminent domain, but said that some council members are interested in the latter option, which led to the compromise vote for both options. With the vote, the city would attempt to reopen acquisition talks with the Coultas family, who own the New Brooklyn site.

“The next steps there would be someone on city staff just reaches out to the owners of the property and informs them of the current tenor of our discussion about it and see how they react to that,” Medina said at Tuesday’s meeting. “How do the owners of that property react in light of the discussion around eminent domain?”

The Coultas family couldn’t be reached for comment Wednesday.

Last year, the city had been zeroing in on purchasing that site – a 2-acre property at the corner of Three Tree Lane and New Brooklyn Road that’s owned by the family of the late developer Tom Coultas. The city announced in September that the family had decided it didn’t want to sell the property at that point, following Coultas’s death in March.

Tom Coultas, Kingston's "doer," dies at 74

With the Tuesday vote, the city will go back and ask them to reconsider, while holding out the option of acquiring the property through eminent domain proceedings – a legal process that would require the city to go to court to justify taking the property.

In such acquisitions, a government entity is required to compensate a property owner. Previously, city officials have maintained they weren’t interested in using the city’s eminent domain powers for the police-court project.

In a preliminary cost estimate developed last year, Coates reported that a 23,000-square-foot, two-story version of the facility at New Brooklyn Road would cost $28.4 million, plus the price of land acquisition. That number had escalation costs built in and assumed construction would begin in February 2020.

That concept included space for the police on the first floor and municipal court facilities on the second story, as well as a separate building for evidence storage and an underground firearm range.

The task force proposal would have asked citizens to make a site recommendation to the council using a weighted set of criteria.

“I know we have some very capable people in the community who might be willing to serve on that task force and to help refine a list of sites and then go through and develop, review all the criteria that’s been identified to date,” Peltier said.

In voting to move forward with the Harrison and New Brooklyn sites, Deets said he didn’t want to delay the planning process any further.

“I really feel that we’ve been elected to make decisions, and people expect us to move forward with this,” he said. “I feel like we have some really good options here.”

EXHIBIT F

ZIONTZ CHESTNUT
ATTORNEYS AT LAW

RICHARD M. BERLEY
MARC D. SLONIM
BRIAN W. CHESTNUT
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March 2, 2020

Kolby Medina
Bainbridge City Council
kmedina@bainbridgewa.gov

Sent via email only

Dear Councilmember Medina;

I write this private letter to you on behalf of my client, who is a concerned resident of Bainbridge Island that prefers to remain anonymous. I have reviewed various documents provided to me relating to your role as a Bainbridge City Councilmember and your role as CEO and President of the Kitsap Community Foundation. These documents raise at least the appearance of an improper relationship, in which individuals or entities donate to the Foundation, you draw a salary from the Foundation, and you also make decisions relating to those donors in your role as a member of the City Council. When you take action on these matters, it appears that you are deciding issues in which you have at least an indirect financial interest.

While we appreciate your dedication to public service, government, and charitable causes and do not call into question the legitimacy or good intentions of the Foundation, your dual roles create conflicts that risk the public's faith in fair and open government. In the past you have identified potential conflicts of interest related to taking action on matters relating to *recipients* of Foundation funds. Our concern relates to undisclosed conflicts arising from *donors* to the Foundation. These conflicts are more serious in that they involve your financial benefit, as opposed to simply distribution of funds to other charities.

For example, please consider the relationship between the Olympic Property Group, your role as Executive Director of the Kitsap Community Foundation, and your role as a Bainbridge City Councilmember in determining the contentious issues surrounding the development of the Suzuki property.

A visit to the Foundation's web page indicates that Jon Rose, President of the Olympic Property Group, makes substantial donations to your organization and is both a Cornerstone Society donor, "the (financial) base on which all of the Foundation's operations are built" and a Foundation Ambassador, "members that we have helped reach out to support causes that matter to them." In 2017 you drew a salary as the Foundation CEO and President of about $85,000, according to a Form 990 filed by the Foundation.[1] These facts suggest that donations associated with the Olympic Property Group provide you with a financial benefit.

[1] More recent filings are not available online. We assume that you have continued to draw a salary in your role at the Foundation.

As a member of the Bainbridge Island City Council, you recently voted to award an up to \$796,000 contract to the Olympic Property Group. The contract was awarded at a June 12, 2018 Council meeting and was signed by Jon Rose on July 13, 2018. The purpose of the contract is to entitle through preliminary plat, a 15-acre parcel located in the City of Bainbridge Island and owned by the City of Bainbridge Island. The contract awarded to Mr. Rose appears favorable towards the Olympic Property Group, including a "project profit" fee of 18%, adding \$121,515 to project costs. My understanding is that at the time the contract was awarded you advocated for this contract in your role as a Councilman. To the best of my knowledge, you did not disclose your relationship with Mr. Rose, Olympic Property Group, or Mr. Rose's donations to the Foundation.

Your conduct may be in violation of the City of Bainbridge Code of Ethics Program. In particular, please see the conflict of interest policy in Article 2, Subpart D.1. That policy requires that:

> an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:
> a. Has any substantial direct or indirect contractual employment related to the matter;
> b. Has other financial or private interest in that matter (which includes serving on a Board of Directors for any organization); or
> c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action.

You are an elected official, who took direct official action on the Olympic Property Group contract decision. Because Mr. Rose is a substantial donor to the organization that pays you a salary, it appears you have a forbidden "financial or private interest" in matters concerning Mr. Rose and Olympic Property Group. You therefore should have identified the conflict and recused yourself from the vote on the Olympic Property Group contract.

It also appears that you have failed to make proper disclosures in advance of taking official action. The City's Ethics Program, Article II, Subpart D.4. requires that "all elected officials shall publicly disclose their financial interest in any matter that comes before them." While it appears you have disclosed interests where the Foundation has made donations, you have not disclosed your financial interests relating to donors to the Kitsap Community Foundation.

Your conduct also raises the potential to violate State law. RCW 42.23.030 states that:

> No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

In *Barry v. Johns*, 82 Wn. App. 865, 920 P.2d 222 (1996), the Division I Court of Appeals clarified that "beneficially interested" relates to financial interest. Because of your salary at the Kitsap Community Foundation, it appears that you have at least an indirect financial interest in contracts that the City enters into with donors to the Foundation, including the Olympic Property Group. Your involvement not only is potentially unlawful and subjects you to a personal fine, it risks that the contracts will be deemed void. RCW 42.23.050.

Additionally, to the extent you engage in quasi-judicial action related to donors to the Kitsap Community Foundation, your dual roles risk that those actions will be overturned under the appearance of fairness doctrine, RCW 42.36.010. The seminal case *Save a Valuable Env't (SAVE) v. Bothell*, 89 Wash. 2d 862, 576 P.2d 401 (1978), involved very similar facts. There, a Council member was also the Executive Director of the local Chamber of Commerce. The Court found these "dual roles" troubling and in violation of State law:

> In *Narrowsview Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 420, 526 P.2d 897 (1974) HN6 we held that participation of a planning commission member whose employer has an interest in the outcome is a violation of the appearance of fairness which vitiates the validity of the zoning ordinance. *See also Chicago, M., St. P. & P.R.R. v. State Human Rights Comm'n*, 87 Wn.2d 802, 557 P.2d 307 (1976). The dual roles of Ms. Dawson as commission member and paid director of the Chamber fall squarely within the rule of that case. The Chamber voted to support the rezone; its members stood to gain financially from it. We do not suggest that Ms. Dawson's vote was influenced by the official Chamber position on the rezone. Her position as employee of the Chamber, though, establishes an interest which might have substantially influenced her decision. This potential is sufficient to negate the appearance of impartiality which is crucial to the proper conduct of planning commission proceedings.

SAVE, 89 Wash. 2d at 872-73. Your role as paid director of the Kitsap Community Foundation and as a Bainbridge City Councilmember similarly raises at least the appearance of an improper connection that risks public faith in transparent and objective governance. Your role on the Council risks City resources and that key decisions will be overturned on appeal.

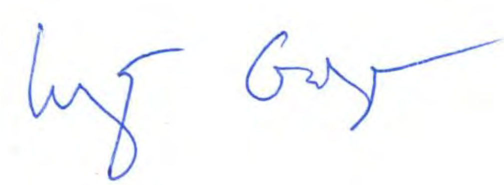
Finally, it appears that the Foundation receives anonymous donations. As you are aware, the Washington Fair Campaign Practices Act, Chapter 42.17A RCW, requires elected officials such as yourself to submit an annual statement of financial affairs. The Act further states that "[n]o payment shall be made to any person required to report under RCW 42.17A.700 and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment." RCW 42.17A.715. My review of your most recent financial statement indicates that you have not revealed the identity of anonymous donors to the Foundation, who in turn help to pay your salary. This risks violation of RCW 42.17A.715.

Thank you for your consideration of these ethical and legal concerns. In order to rectify the legitimate concerns relating to your dual roles, we believe that you must disclose past actions you have taken, including on the Olympic Property Group contract, which involved donors to the Kitsap Community Foundation. The City Council, with advice of its counsel, can then decide whether there are legal concerns and how to resolve them.

Going forward, it appears that to resolve the potential conflict created by your dual roles you can take two courses of action. You could step down from either role. Alternatively, you could disclose all instances in which your actions on the City Council involve donors to the Foundation, and recuse yourself from such actions. This would also entail disclosure of all anonymous gifts to the Foundation, so the public can be assured of full transparency and lack of conflict of interest.

Please contact me by phone or email if you have questions, concerns, or corrections regarding this letter. I request that you provide any response to this letter by close of business on Friday, March 6, 2020.

Sincerely,



Wyatt Golding
wgolding@ziontzchestnut.com

EXHIBIT G

From: Kol Medina <kmedina@bainbridgewa.gov>
Sent: Saturday, March 14, 2020 11:53 AM
To: Wyatt Golding <wgolding@ziontzchestnut.com>
Subject: RE: Correspondence

Wyatt,

The City Attorney let me know late on Friday that he has been caught up in the City's covid-19 response and has not had time to thoroughly review your letter. Because of the ongoing uncertainty about how this covid-19 response will play out, he can't give me a clear time by when he can thoroughly review and analyze your letter. So all I can tell you at this time is that he or I will get back to you as soon as we can.

At this time, I think it is best for you to communicate with me directly. If that changes, I will let you know.

I also want to encourage you to caution your client about how he/she/they approach this. Knowledge of this letter was circulating in our community before I read it, and before you sent it to the entire Council. So it seems that your client is talking to people about this. You chose your words carefully in that letter, which I appreciate. But lurking behind your carefully chosen words is an accusation of corruption involving myself, a leading nonprofit organization in our community (and by implication the 17-member Board of that organization), an individual, and a deep-pocketed for-profit company in our community.

Your letter focuses on whether I've had undisclosed conflicts of interest. I'm happy to discuss those questions and have them resolved. I have complete confidence that I have done nothing wrong, either legally or ethically. But I'm an elected official and, if members of the public have questions about this, I want to be completely open about it and work it through. To that end, at our meeting last Tuesday, I told the entire Council (and thereby the public) that I had received this letter. I explained the gist of it and told the Council that I would be happy for the Council to have a thorough discussion of it. I assume that will happen although I can't force the Council to do it.

But if your client is making accusations in our community of corruption involving these parties, it is likely that your client will be sued for slander. Any such accusations of corruption are completely baseless, which means those accusations are slander. I, as an elected public official, do not have the same protections against slander as a normal person or entity. But all of the other entities and people that you and your client are pulling into this do have protections against slander. I encourage you to explain this to your client.

Thank you,
Kol

Kol Medina
Bainbridge Island Council Member
Position 2, North Ward
kmedina@bainbridgewa.gov
206-512-7155

Response to Ethics Complaint 2020-03

To:	COBI Ethics Board
From:	Kol Medina
Date:	November 9, 2020
Subject:	Response to Ethics Complaint 2020-03 alleging that I had financial interests in decisions brought before Council

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As I will explain below, this complaint should be dismissed by the Ethics Board because it has no legal or factual basis on which to proceed. I have never had any financial or private interest in any decision that I've made on Council. It's that simple. And complainant provides no facts to the contrary because there are no facts to the contrary.

However, I feel compelled to also address two procedural issues related to this complaint. I understand that the Ethics Board is "testing the system" (Chair Hodges' words) by considering complaints before fully developing the Board's Procedural Rules. I get that. It makes sense.

Since I am the subject of the complaints, I am part of the test. I therefore feel a responsibility to address procedural issues, not just the substance of the complaint. I also feel a responsibility to address procedural issues because decisions made by the Ethics Board on procedural issues now will set the precedent for future complaints. It is important that we get this right from the beginning.

Therefore, in this Response I address these three points.

1. Mootness of the Complaint
2. The Complaint does not Comply with the Ethics Code
3. Substance of the Complaint

This Complaint is Moot and Should be Dismissed

By the time the Ethics Board considers this complaint at its meeting on November 16th, I will no longer be a Councilmember. Therefore, this complaint is moot and should be dismissed.

This complaint is moot because there is no relief that can be provided under the Code even if, hypothetically, the Ethics Board were to forward this complaint to the Hearing Examiner ("HEX") and the HEX were to decide that I had violated our Ethics Code. If that hypothetical situation were to occur, then the HEX's decision would go to the City Council. The City Council would then need to take action under Article IV, Section B of the Ethics Code. The only option that the Council would have available at that time is taking no action. Why is that? Because the only other actions allowed to Council under Article IV, Section B are actions in regards to "a Councilmember." I will not be a Councilmember. Therefore, there is no action the Council could take against me. Therefore, the complaint is moot.

Earlier this year, Mr. Peltier, filed an ethics complaint against the former members of the Ethics Board. The HEX dismissed that complaint as moot because those persons were no longer serving on the Ethics Board. I have attached the HEX's written decision as Attachment A. I submit that the HEX's decision in that earlier situation is decisive in regards to complaint 2020-02.

In the concluding paragraph of the HEX's decision, the HEX states this: "Our state supreme court has decided that a case is moot if effective relief can no longer be provided. The ultimate sanction for a board member found to be in violation of the code of conduct or of an ethical rule would be removal from the board." In my case, the ultimate sanctions are all sanctions that can only be made against sitting Councilmembers. Therefore, by the HEX's reasoning, this complaint is moot.

Granted, my situation is somewhat different from the situation in the complaint that the HEX dismissed as moot. In that situation, the Ethics Board members being complained against had resigned from the Ethics Board prior to the complaint being filed. The HEX, in his decision, does comment on this. Whereas, in my situation, I was on Council when the complaint was filed, but I will not be on Council when the complaint is considered. So there is a factual difference between the two situations. However, that factual difference has no bearing on the ultimate question of mootness. As the HEX states in his prior decision, a complaint is moot "if effective relief can no longer be provided." That is the decisive point.

The HEX's reasoning for why this complaint is moot is based on logic and state court precedence. However, there is additional reasoning showing why this complaint is moot if I will not be on Council when it is heard. The additional reasoning is this: Considering a complaint against a person who is no longer serving in a City position would go beyond, and therefore violate, the purpose of the Ethics Code.

The introduction to the Ethics Code states the purpose of the Ethics Code. It clearly states that the purpose of the Ethics Code is to maintain the public's confidence and trust in the City government. This is the only purpose stated for the Ethics Code. Therefore, this *is* the only purpose of the Ethics Code.

> "All those associated with City government, including Councilmembers and members of City Committees and Commissions, seek to earn and maintain the public's confidence in

> the City's services and the public's trust in its government. <u>To this end</u>, the decisions and work of those associated with City government must meet the highest ethical standards. It is <u>therefore</u> the purpose of this program to: . . . ." [emphasis added]

Considering a complaint against someone who is no longer serving in a City position does not further the sole purpose of the Ethics Code and therefore, in my opinion, violates the purpose of the Ethics Code. The purpose of the Ethics Code is not to punish people or determine guilt in a public manner. The purpose of the Ethics Code is to "maintain the public's confidence . . . and trust in its government." The manner in which the Ethics Code does that is by putting in place a process whereby people who are in government can have their actions changed (or they can be removed) so that they are no longer taking actions that undermine the public trust in government. That is the entire and sole purpose of the Ethics Code. When a person is no longer on the Council or a committee, they are no longer in a position where they can take actions that can undermine the public trust in government. Therefore, the Ethics Code no longer applies because its purpose can not be furthered.

In other words, the sole purpose of the Ethics Code is to correct the actions of current city representatives. The purpose is not to levy punishment. I will no longer be a city representative. Therefore, the complaint is moot.

The Complaint Does Not Comply with the Ethics Code

If the Ethics Board does not dismiss the complaint on the ground of mootness, then the Ethics Board should return the complaint to Mr. Golding with a statement that the complaint will not be considered by the Ethics Board until and unless he submits an amended complaint that complies with the Ethics Code.

I'll list below the pertinent facts.

Article III, Section A.2 of the Code states that "[e]ach complaint must include the name and address of the complainant."

In the section of the cover page for the complaint where a complainant must include their name or address, Mr. Golding writes this: "Attorney Wyatt Golding (on behalf of unnamed client)."

I understand that our former Deputy City Attorney, Mr. Sepler, stated that he didn't think the Ethics Code was clear on whether or not the City could or could not accept ethics complaints made by a third-party complainant (I am paraphrasing).

Last year, the City Council re-wrote large portions of the Ethics Code. In so doing, the Council had the opportunity to consider whether or not to allow the submission of anonymous complaints. The Council did not choose to allow the submission of anonymous complaints.

Earlier this year, the Council again amended the Ethics Code. Included in these amendments was language that specifically indicates that Article I opinions should not contain the names of the complainant and respondent. While the Council did not use the word "anonymous" in these amendments to the Code, the Council discussion of this topic clearly indicates that the Council was deciding that Article I complaints should be anonymous to the greatest degree possible. It follows that, if the Council had likewise wanted to allow anonymous Article II complaints or provide any level of protection to the name of Article II complainants and respondents, then the Council would have amended the Code to do so at the same time as it amended the Code in relation to Article I complaints. The Council did not do so.

Councilmember Hytopoulos stated, during the discussion of the amendments discussed in the prior paragraph, that for the first three years of the Ethics Code, ethics opinions were anonymous. I have not confirmed her statement, but it is in a public document. I will take her at her word. She has knowledge of this because when she was on Council a decade ago, the Council at that time substantially amended the Ethics Code. It appears, therefore, that sometime between when the Ethics Code was adopted and the present day, the Council specifically amended the Ethics Code to require that complaints not be anonymous.

Let's analyze those facts

The Ethics Code requires in plain language that the complainant include his or her name and address in the complaint. The complaint submitted by Mr. Golding does not include the name of the complainant. It is therefore plainly out of compliance with our Ethics Code and must be either dismissed outright or returned to Mr. Golding with an opportunity for him to cure it.

Subsequent to filing his client's complaint, Mr. Golding claimed in a letter he sent to Council the he is the complainant. But by his own admission, he is not the complainant. In the complaint itself he clearly states that he is submitting the complaint on behalf of an anonymous third-party. His own words indicate that his client is the complainant. Likewise, in his subsequent letter, Mr. Golding again, by his owns words indicates that he is acting on behalf of the complainant. He states in his letter that he is representing an anonymous client. Mr. Golding can't have it both ways – he can't both be the complainant and be filing a complaint on behalf of an anonymous third-party.[1]

[1] One of the reasons why Mr. Golding can't have it both ways is because it would arguably be a violation of the Washington State Bar Association's Rules of Professional Conduct (the Bar's ethics rules) for him to file this complaint on behalf of a client and not indicate that he was acting on behalf of a client. With extremely limited exceptions, an attorney must always divulge the name of his client when filing legal documents on behalf of that client in a court. An attorney is *never* the plaintiff in a lawsuit. The attorney's client is the plaintiff, *always*. Mr. Golding knows this. But he is attempting to abuse our Ethics Code by filing a legal brief that does not name his client and in which he tries to claim that he himself is the complainant, something he knows he could never do in a true court.

I think the Ethics Code is clear in its intent and the Ethics Board should determine that a complaint filed on behalf of an anonymous third-party should be dismissed or returned to the complainant.

However, if the Ethics Board reviews the analysis above and decides that it is still uncertain whether this complaint does not comply with the Ethics Code, then we should move to a discussion of how the Ethics Board could obtain guidance or certainty.

One way to obtain guidance is to ask the City Attorney assigned to the Ethics Board for a legal opinion on the matter. As I understand it, this question was raised briefly in the last Ethics Board meeting. I also understand that this question was raised improperly because this complaint was not on the Ethics Board's agenda for the night so no one, including the Deputy City Attorney, was prepared to discuss it. But I will put that issue aside.

As I understand it, the Deputy City Attorney made a statement to the effect that it was not clear from the Ethics Code whether this complaint submitted on behalf of a third-party complies with the Ethics Code or not and therefore, the Ethics Board could, if it desired accept the complaint. There are two important points here. One, as I understand it, the Deputy City Attorney certainly did not issue a "legal opinion" on this question. Two, he indicated that the answer was not clear from the Code. He did not conclusively state that Code, in his opinion, indicates that a third-party can submit a complaint on behalf the actual complainant.

Therefore, as I understand it, the City Attorney has not answered the question in any type of reasoned or conclusive manner. Furthermore, even if the City Attorney did issue a formal, written legal opinion, that would not be binding on the Ethics Board. It would be guidance only. The City Attorney's office is not the judicial branch of our City Government. It does not have the power to issue binding interpretations of the City's codes.

The City Council, however, as the legislative body that made the Ethics Code, can make a binding and conclusive determination. As our City Attorney has said, the Ethics Code is the "Council's Ethics Code." There is no requirement that the city have an Ethics Code. The Council, by its choice and legislative power, decided, in its discretion, to adopt an Ethics Code. The City Council has the authority to amend the Ethics Code at any time and make decisions that clarify the Ethics Code at any time.

If the Ethics Board does not feel like it has sufficient certainty to make a decision on this question of anonymous third-party complaints, I suggest that the Ethics Board submit the question to the Council for the Council to resolve and place this complaint on hold until the Council resolves this question.

In fact, the Council has already considered a motion to add language to the Ethics Board's Procedural Rules that makes it abundantly clear that complaints submitted by anonymous third-parties are not allowed.[2] A majority of Council supported making that

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[2] I am the Councilmember who brought the motion that the Council has tentatively accepted. As Chair Hodges has stated, the Ethics Board is "testing the system" by considering complaints before having its rules formally approved by the Council. I am the person being run through the test. As such, I

clarification to the Ethics Board's Procedural Rules. However, a final decision has not yet been made by the Council. The Council tries to always have two touches on an item before making a decision. So the Council has tentatively approved this change and will vote at a subsequent meeting on whether to adopt the change.

Chair Hodges took part in our discussion at Council. If I remember correctly, I asked her directly what she thought about my motion to clarify that the Code will not accept complaints made on behalf of anonymous third-parties. She did not express an opinion on the substance of the motion, but expressed her support for the Council making a clear decision on this question one way or the other. If I have mis-remembered Chair Hodges' comments on this, I trust she will correct me when the Ethics Board discussions this response.

Finally, I want to address this matter from a policy perspective. I'll preface my comments by stating that the Ethics Board does not have the authority to create or set policy. It only has the authority given to it under the Ethics Code. The Council is the policy-making body for the City. However, if the Ethics Board, after reading this Response, still (a) believes that the Ethics Code is unclear on this point of accepting third-party anonymous complaints and (b) is considering making its own decision on this question of whether the City should accept anonymous third-party complaints, then I will raise some policy issues for the Board to consider.

The policy reasons why the Council did not amend the Ethics Code to allow for anonymous complaints (or complaints submitted on behalf of anonymous third-parties) are many. I can't speak for each Councilmember, but I can speak for myself and I can tell the Ethics Board that I am quite confident that a majority if not all current Councilmember agree with these policy points:

- The 6th Amendment to the U.S. Constitution guarantees a person accused of a crime the right to face his or her accuser. Article II of the City's Ethics Code is largely a summary of state laws, some of which are or could be considered criminal laws. So an Article II complaint is akin to a criminal complaint. A court would never accept a criminal complaint of any of the Article II rules without the actual complainant being named. A court would never accept that the complainant's attorney was the complainant or plaintiff. I am not suggesting that the 6th Amendment of the U.S. Constitution controls in the situation of this complaint. Rather, I am pointing out that the right to know your

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have a perspective on how the system is working. I shared that perspective with the Council. A majority of Council tentatively agreed that the Ethics Code does not allow for the submission of anonymous complaints by third-parties.

There is nothing out of order with a sitting Councilmember making motions to amend or clarify the Ethics Code or its Procedural Rules. In fact, our City Attorney has repeatedly stated that it is useful for Councilmembers who are experiencing a matter directly (such as our land use code or our Ethics Code) to take part in discussions and decisions about the matter. Our first-hand experience is recognized as useful to the discussion. The Council has never disagreed with this approach, at least not while I've been on Council.

accuser is considered one of the most important rights in our country. Please consider why that is the case.

- Allowing anonymous third-party complaints would allow sitting Councilmembers to anonymously submit complaints against their colleagues. This would allow sitting Councilmembers to file a complaint in an attempt to politically weaken and distract a colleague because they do not like one of their colleagues or disagree with a colleague's decisions. And I will add that, for reasons I will not explain here, I have 99% confidence that the anonymous complainant either is a sitting Councilmember or is a supporter of a sitting Councilmember. Likewise, I have 99% confidence that one or more Councilmembers know who the anonymous complainant is and are in some manner actively communicating or coordinating with the anonymous complainant. In other words, allowing anonymous third-party complaints will allow the Ethics Code to become a political tool for Councilmembers and their supporters to use against each other, which is what I believe is happening in this case, at least in part.

- Allowing anonymous third-party complaints would allow anyone anywhere in the world to submit a complaint. For all we know, Mr. Golding's anonymous client does not even live on Bainbridge Island. Should the City be in a position where it expends time, resources, and energy considering complaints made by people who don't even live here?

- Allowing anonymous third-party complaints could give people leverage over a sitting Councilmember when it comes to the Councilmember making decisions on Council. This would be true for members of City committees as well. A situation could arise where a party who has a financial interest in a decision before the Council tries to pressure a Councilmember into voting in a particular way by threatening an anonymous Ethics Complaint. If the party would be forced to file the complaint in their name, they wouldn't file the complaint because the subject of the complaint would be able to accuse them of blackmail. But if you don't know your accuser's name, neither the respondent, nor the public, nor the Ethics Board could determine if there are ulterior motives for the complaint.

- Allowing anonymous third-party complaints allows people with a political agenda to easily damage and tarnish the reputation of a sitting Councilmember. Keep in mind that the person/people who filed complaint 2020-03 have already largely achieved what I am confident is part of their agenda – damaging me and my reputation. I know that the original letter submitted to the Council by Mr. Golding back in March was anonymously delivered to the Bainbridge Review.[3] And now, somehow the complaints filed against me made their way into the Bainbridge Review a few weeks ago. I'm sure that a City staff person or Ethics Board member is not who provided the information to the Review. Rather, it was provided, I'm confident, by the person/people who are behind this frivolous complaint. If we knew who the complainant was, we could judge whether the complainant actually has as part of his/her agenda the purpose of simply damaging me.

[3] I know this because the editor at the time told me.

But because we do not know who the anonymous complainant is, no one can make that judgment.

- The only possible reason to allow for anonymous complaints would be to "protect" the complainant. Mr. Golding indicates that his client wants to be anonymous because the client fears "retribution" from me. I urge the Ethics Board to think very clearly about what "retribution" a City Councilmember or a member of a City committee could exact against a complainant. As a City Councilmember I have no power of my own. Zero power. The only power I have is to vote, along with a majority of Council, to approve laws and pass City policies. There is no way for me to use that "power" to seek retribution against someone. On the other hand, if I were to attempt to publicly humiliate this complainant by making statements from the dais, I would rightly be the subject of an Article I ethics complaint. In other words, it would be a violation of our Ethics Code for me seek retribution in the form of public statements, or frankly, any other form.

In short, in regards to policy, there is no substantially good reason to allow for anonymous complaints. However, there are plenty of good reasons to not allow anonymous complaints, which is why the Council did not decide to allow anonymous complaints.

Summary

I submit that the Ethics Board should either dismiss this complaint for failure to comply with our Ethics Code or give Mr. Golding an opportunity to amend the complaint to include the actual complainant's name and address.

If the Ethics Board feels that it does not want to take either of those actions, then I submit that the Ethics Board should take one of the following actions before considering the substance of the complaints. (A) Request a clear legal opinion from the City Attorney's office regarding whether the Ethics Code, coupled with the legislative history of the Ethics Code, allows for anonymous third-party complaints. Or (B) refer this question to the Council, as the author of the Ethics Code, for the Council to make a decision.

Substance of the Complaint

The anonymous complainant is claiming that I violated the following provisions of Article II of the Ethics Code.

> **A. Gifts and Compensation**
> **1. Limitations on City-Related Gifts and Outside Compensation**
> Except as permitted under Subsections A.2 and A.3 below, no Councilmember or member of a City Committee or Commission, or any member of their immediate families, shall, directly or indirectly, accept any gift (as defined below) for a matter connected with or related to their services or duties with the City of

Bainbridge Island or accept any non-City compensation for the performance or non-performance of those services or duties.

. . . .

D. Conflict of Interest – General
1. Applications of Conflict of Interest
Except as permitted in Subsections D.2 or D.3 below, a Councilmember or member of a City Committee or Commission shall not take any direct official action on a matter if they, or a member of their immediate family:

. . . .

b. Have other significant financial or private interest in that matter (which includes serving on a Board of Directors for any organization but does not, for Councilmembers, include appointing members to the Salary Commission); or

. . . .

4. Disclosure for Councilmembers
All Councilmembers are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure. In addition, all Councilmembers shall publicly disclose their financial interest in any matter that comes before them. All Councilmembers shall annually complete a conflict of interest statement to be submitted to the City Clerk by April 15th.

While the complainant is alleging that I've violated three provisions of the Ethics Code, the complaint is really only making one allegation. The allegation is that I had a financial or private interest in two decisions I made while on City Council.

The logic used by the complainant to make this allegation goes like this: Because person X made a donation to the nonprofit where I work as an employee, I have a financial or private interest in contracts between the City and the company where person X works.

The question that the Ethics Board needs to answer is whether the complainant has submitted any facts that, even if true, would make complainant's allegation true. The question is as simple as that.

It is not a violation of the Ethics Code for a Councilmember to be involved in a situation in which some person *might think* the Councilmember has a financial or private interest. It is not a violation of the Ethics Code for a Councilmember to be involved in a situation for which it *might appear* that, or it *might be possible* that, the Councilmember has a financial or private interest.

It is only a violation of the Ethics Code provisions cited in the complaint for a Councilmember to *actually have* a financial or private interest in an action on which a Councilmember makes a decision. This is the plain language of the Ethics Code. In order for me to have violated the Ethics Code, I must have had an *actual* financial or private interest in a vote that I took.

Thus, the question, the only question, in front of the Ethics Board is this: Did I have a financial or private interest in either of the decisions cited by complainant? The answer is simple: No, I did not. The complaint has provided no evidence that I did. And no evidence would ever be found that I did because I did not have any interest in these decisions. It's that simple. The complaint is specious, at best.

Rather than provide any facts that I actually had a financial or private interest in the decisions I took part in on Council, the complaint attempts to make a legal argument that claims that by being an employee at a nonprofit to which someone made a donation I had a financial interest in the contracts I voted on.

This is no different than claiming that Councilmember Schneider would have a financial interest in a contract in front of Council if the party to the contract had at some time made a purchase at Councilmember Schneider's business. Or that Councilmember Nassar has a financial interest in a contract in front of Council because the party to the contract at some point hired her father's business to do some work. Or that a Councilmember who works at Town & Country Markets has a financial interest in a contract in front of Council because a person who worked at the business that is a party to the contract bought a lot of groceries at Town & Country Markets. I think this last example makes it clear how absurd the argument is.

Aside from being absurd, more importantly the argument is completely unsupported by the law. To be clear, the Ethics Board's job is not to make legal decisions or determine how to apply the law. However, in this situation, the complainant is relying on legal precedent and legal arguments so I am compelled to talk about how the law might interpret this situation.

Before I started on Council, I spoke with the City Attorney at length about this very type of situation. I proactively sought advice from the City Attorney[4] because I anticipated that a situation like this might arise. The City Attorney provided me with a clear and unambiguous opinion on this issue. Based on that opinion, I did not feel that I needed to disclose situations such as this.

The legal analysis is simple: There is no *nexus* between a donation to the nonprofit I work at and my vote as a Councilmember on a contract in front of the Council. Use the word "connection" instead of nexus, if you'd like. Those are two completely separate transactions that do not overlap in any manner. There is no nexus or connection between them. Therefore, I do not as a matter of law gain a financial or private interest in the Council decision simply by reason of me being tangentially involved in a different transaction (that transaction being a donation to the nonprofit I work at).

[4] The City Attorney was Lisa Marshall at the time.

I have also discussed these types of situations with the current City Attorney. His advice to me did not lead me to approach these situations in different ways. The current City Attorney has legal advice on this matter that he could share with the Ethics Board.

Based on this advice I've received, I am confident that there is no nexus between donations at the nonprofit I work at and decisions that I make on Council. As a matter of law, I do not suddenly have a financial or private interest in a contract in front of Council because someone who works for a business that is a party to the contract made a donation to the nonprofit that I work at. That is clear. And if it is not clear to the Ethics Board, then the Ethics Board could request a legal opinion from the attorney assigned to work with the Board.

Again, what the law says is not dispositive to the Ethics Board's determination here. The Ethics Board's job is to interpret and apply the Ethics Code, not the law. But to the degree that Mr. Golding wants to use legal arguments to make the complaint and to the degree that the Ethics Board might see legal arguments as relevant to the question in front of it, I am confident that a legal opinion from a third-party attorney – such as the attorney assigned to the Ethics Board – would indicate that there is no legal basis for a finding of a financial or private interest in these situations because there is no nexus between the transactions.

If there is no legal basis, then we need to examine a factual basis. There is only one way in which I would come to have a financial or private interest in a contract in front of the Council that involves a business at which a person works who made a donation to the nonprofit I work at. The one way is this: If the person who made the donation said to me, or I had reason to believe, that they would only make the donation if I voted to approve the contract AND I took part in the scheme AND the Board of Directors at the nonprofit I work at also took part in the scheme and agreed to pay to me some of the donation. Only then would I have an *actual* interest in the contract in front of Council.

To put it differently, there would only be a nexus between the two transactions if someone explicitly made one transaction dependent on the other and I and the nonprofit's Board agreed to take part in the corrupt scheme. In other words, there would only be a nexus if the donors named in the complaint and I engaged in a disgusting, illegal, and morally reprehensible scheme of corruption where I sold my Council votes in return for donations to my employer.

That corruption never happened. I can tell you with utmost honesty that no donor to the nonprofit I work at has *ever* implicitly or explicitly asked me to vote a certain way on Council in return for a donation. In fact, I've never even *discussed* the City contracts cited in the complaint with the donors cited in the complaint. I have no doubt that all of the donors cited in the complaint would submit a signed attestation indicating that their donations made to the nonprofit I work at had nothing to do with any contracts in front of the Council, that they never even spoke to me about those contracts, and that they would never condition their donations on how I might vote on Council.

These people made donations to the nonprofit I work at because they believe in what the nonprofit is doing. They are people who support good work in the community. That is all. The implicit allegations in the complaint that these people have attempted to buy my votes on Council is completely baseless slander. It is gross, to say the least.

In fact, the slander goes beyond those donors. The slander extends to the Board of Directors of the nonprofit that I work at. Those people on that Board set my salary at the nonprofit. My salary is set in a budget each year. I don't work on commission. So the only way for donations made to the nonprofit I work at to somehow end up in my pocket as payment for my votes on Council would be for that Board of Directors to be part of the corrupt scheme. This is absurd.[5]

I want to finish by casting this in a somewhat different framework. You might find yourself thinking something like this: "Well, Kol knew that people who worked at these businesses at times donated to his employer. So maybe he felt some pressure to vote in favor of the contracts so that the employees of those businesses would keep donating to his employer. Isn't that a 'private interest'"?

If you find yourself thinking that way, let me tell you clearly that the answer is "no, that is not a private interest." Rather, that thinking is pure conjecture and nothing more. Again, there is no nexus, no connection between the donations and my decisions. That line of thinking *assumes* that the donors would stop donating if I voted in a certain way. And it *assumes* that I would even consider that possibility when voting. I have strong traits called honor, self-respect, respect for my community, honesty, and integrity. I have never, not even once, considered how a vote I take on Council would impact a donation to my employer. It's absurd and completely baseless to allege that I have. The Ethics Board must operate on the basis of law and facts, not conjecture and assumptions.

Summary

It is only a violation of the Ethics Code provisions cited in the complaint for a Councilmember to *actually have* a financial or private interest in an action on which a Councilmember makes a decision. Thus, the only question in front of the Ethics Board is "Did Councilmember Medina have an actual financial or private interest in any of the actions cited in the complaint?" The simple and clear answer is "no, I did not have any financial or private interest in the votes I took."

To the degree the Ethics Board deems it relevant, as a matter of law, the arguments made in the complaint are without merit. In fact, they are worse than without merit – they are specious arguments that have the effect of abusing our Ethics Code by using the Code to damage a Councilmember and implicitly slander people and organizations in the community.

The only way that I would have had a financial or private interest in the contracts cited in the complaint was if a corrupt scheme existed whereby the person making the donation, the

[5] One of the reasons why this is absurd is inherent in how much money is donated to the nonprofit I work at. This nonprofit receives millions of dollars in donations each year from thousands of donors. It is absurd to think that this nonprofit's Board and I would engage in corruption or that I would disregard my own morals in return for a $1,000 donation.

business they worked for, my nonprofit employer's Board of Directors, and I all agreed that some or all of the donation made would be paid to me.

There is no evidence provided that, even if the Ethics Board assumed it to be true, would lead to a determination that I *actually had* a financial or private interest in these transactions. Thus, this complaint should be dismissed by the Ethics Board.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Kol Medina

Signed on Bainbridge Island, WA, on November 9, 2020

Attachments

A. Hearing Examiner Decision Dismissing Complaint as Moot

Attachment A

Hearing Examiner Decision

BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND

In the Matter of	)	No. HEA 2020-Ethics
	)	
Ron Peltier, Complainant	)	
	)	REVIEW OF
v.	)	ETHICS COMPLAINT
	)	
Suzanne Keel-Eckmann, Ingrid Billies,	)	
Mardel Gale, & Brian Strully	)	
	)	
Regarding an Ethics Complaint	)	

BACKGROUND

The Complaint

Ron Peltier filed an Ethics Complaint Form with the City Clerk on January 28, 2020, alleging violations of the Code of Conduct (Article I) by four former members of the City of Bainbridge Island Ethics Board (Ethics Board). In his complaint, Mr. Peltier specifically alleges violations of Section B, Core Values, 2. Integrity; and Section C, Ethics Principles, 1. Obligations to the Public. In response to a question on the Ethics Complaint Form asking for factual support of the allegations of ethical violations, Mr. Peltier states that the "1/27/20 letter of resignation signed by respondents" is attached as well as "additional comments."

In his comments, Mr. Peltier states that, in his opinion, the Washington State Open Public Meetings Act (OPMA), chapter 42.30 RCW, applies to the Ethics Board and that the four members named in his complaint violated OPMA by "conducting a secret meeting" to discuss issues "related to the City's Ethics Program." Mr. Peltier claims that, by violating OPMA, the four members thereby also violated Article I of the City's Code of Conduct. He states that they did this in the following ways:

> By conducting a secret meeting, the four members "failed to promote lawful policies and failed to uphold the highest standards of the community in violation of Article I, B. 2.; and that
>
> By conducting a secret meeting, the four members acted "contrary to promoting the public good and perserving the public's trust" as well as exhibiting "a lack of transparency by depriving the public of its lawful right to observe how a quorum of the Ethics Board conducts its business" in violation of Article I, C.1.

Mr. Peltier attached a copy of the letter of resignation, dated January 27, to his complaint as part of the statement of facts supporting his complaint. He alleges that the letter itself reveals that the four members of the Ethics Board met in secret to discuss the new ethics resolution recently adopted by the City Council, and agreed together to resign. He states there are no minutes of any public meeting where resignation is discussed in an open meeting. He admits, however, that such a discussion may have occurred, but it was not captured in the minutes.

Council Resolution 2019-26

The City Council adopted Resolution 2019-26 on November 26, 2019, with an effective date of February 1, 2020. The resolution, however, provides that the "Ethics Board shall not, without Council approval, consider any complaint . . . until Section 1 of this resolution takes effect" and that "Section 2 of this resolution shall take effect and be in force immediately upon passage." The Council apparently did this to allow the Ethics Board a period of transition from the old legislation to the new legislation.

The resolution provides the process by which complaints must be filed and considered by the Ethics Board. It notes that the "Code of Conduct and Ethics Progam" detailed in the resolution is intended to supplement state and federal law, and that members of City Committees must comply with state and federal laws in performance of their public duties.

Article I of the resolution establishes four Core Values and three Ethics Principles to guide conduct by City Council members and members of City Committees and Commissions. Article II establishes additional Code of Ethics rules, none of which are involved in the allegations of Mr. Peltier. Article III of the resolution provides the procedures for filing and reviewing a complaint. The complaint is to be filed with the City Clerk, alleging violations of either Article I, Article II, or the Employee Manual. Here, Mr. Peltier alleges violations of Article I. The resolution further provides that, if a complaint alleges one or more violations of Article I by the Ethics Board, the City Clerk must refer the complaint to the Hearing Examiner.

The Role of the Hearing Examiner

Under the resolution, the Hearing Examiner must make a threshold determination as to whether the complaint is reasonably credible and whether the facts asserted in the complaint, if true, would constitute a violation of the Article I Code of Conduct. If it is determined, following legal review, that the complaint lacks reasonable credibility, the Hearing Examiner must issue a written determination to the City Clerk dismissing the complaint. If it is determined by the Hearing Examiner that the facts stated, if true, would *not* constitue a violation, then the complaint must also be dismissed with no further action by the Hearing Exminer. If, however, the Hearing Examiner determines that the complaint is reasonably credible and that the facts asserted, if true, would consitute a violation of the Code of Conduct in Article I, then the Hearing Examiner must, after legal review, transmit the determination to the City Clerk who must refer the complaint to a mediator for reconciliation. *Code of Conduct and Ethics Program, pages14-15.*

REVIEW OF COMPLAINT

The complaints made by Mr. Peltier are not ones that can be considered by the Hearing Examiner under the resolution adopted by the City Council. The City's Code of Conduct and Ethics Program applies only to persons actively associated with city government, not those who have resigned or completed their terms. This is made clear (1) in the preamble to Article I, which applies only to "Councilmembers and members of City Committees and Commissions"; (2) in the introduction to Article II, which states that the Code of Ethics applies only to "individuals serving on City Committees and Commissions"; and (3) in Article III, which requires that a complaint must allege violations of the Code of Conduct or the Code of Ethics "by a Councilmember or a member of a City Committee or Commission." *Code of Conduct and Ethics Program, pages 7, 9, & 14.*

The restriction of the application of the Code of Conduct and Ethics Program to only *members* of the City Council, committees, or commissions makes sense. Otherwise, anyone at any time could allege a violation of the Code of Conduct for past behavior of one who was once a member of the Council, a committee, or a commission for behavior that is long past, where facts may be difficult to ascertain and the conduct alleged is no longer damaging to ongoing governmental operations. Such alleged violations by persons no longer a member of the council, committee or commission fall outside the scope of the Code of Conduct and Ethics Program, even if true. The Council, when adopting the Code of Conduct and Ethics Program, did not intend that allegations be made for conduct in the past by one who is no longer a member of the City Council, a commission, or a committee. Ethical considerations and a code of conduct apply to those who are currently serving, to help foster confidence in the decisions made by those currently involved in city government.

The individuals named by Mr. Peltier in his complaint resigned before the complaint was filed with the City. Complaints may only be filed when the individual named is a member of the City Council, a committee, or a commission. The individuals named in the complaint are no longer members of the Ethics Board. Therefore, the complaint must be dismissed as moot.

Moot means that the issue raised is "of little or no practical value, meaning, or relevance" so that, "in practical terms, the issue . . . is moot because the deadline has passed."[1] Washington courts have also addressed mootness. Our state supreme court has decided that a case is moot if effective relief can no longer be provided.[2] The ultimate sanction for a board member found to be in violation of the code of conduct or of an ethical rule would be removal from the board.[3]

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[1] Dictionary.com definition of "moot," as determined online on 2/12/20.

[2] *See, e.g., State v. Hunley,* 175 Wn.2d 901, 287 P.3d 584 (2012); *In re Det. of M.W.,* 185 Wn.2d 633, 374 P.3d 1123 (2016).

[3] *Code of Conduct and Ethics Program, page 22.* It is noteworthy that sanctions are to be administered by the City Council "to the Councilmember or member of a City Committee or Commission who has violated

Here, once a resignation of the board member occurs, in effect the deadline for filing a complaint has passed. Any complaint filed under the City's Code of Conduct and Ethics Program after the resignations were submitted is moot. Therefore, the complaint must be dismissed. This decision constitutes the written determination to the City Clerk and the dismissal of the complaint, as required by Resolution 2019-26.[4]

Decided this day 24th day of February 2020.

Theodore Paul Hunter

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

the Code," clearly indicating that the individual involved must be a member at the time the sanction is administered. The section on sanctions also provides that those expressed in the resolution are in addition to "any other penalty, sanction, or remedy which may be imposed or sought according to law or equity." Removal of a member from the council, committee, or commission where the member served is the ultimate sanction. If a member has already resigned, no sanction is possible because there is no effective relief that could be granted: the case is moot.

[4] In his complaint, Mr. Peltier also alleges violations of the Open Public Meeting Act, chapter 42.30 RCW, which also specifies what sanctions may apply. Those allegations and any determination of violations are best directed to the superior court, which has the authority to decide them and to assess penalties. The Hearing Examiner makes no decision on the merits of those allegations.