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AGENDA

1. CALL TO ORDER – 6:30 P.M.
2. DISCLOSURE OF CONFLICTS OF INTEREST
3. ACCEPTANCE OF MEETING MINUTES – DECEMBER 21, 2020
4. PUBLIC COMMENT
5. COMMUNICATION WITH CITY COUNCIL
6. CONSIDER RECORDING OF EB MEETINGS
7. REVIEW DETERMINATION LETTER EB-2020-02 (ARTICLE II COMPLAINT)
8. REVIEW DETERMINATION LETTER EB-2020-04 (ARTICLE II COMPLAINT)
9. REVIEW DETERMINATION LETTER EB-2020-05 (ARTICLE II COMPLAINT)
10. ADDITIONAL CONSIDERATION AND RE-ASSIGNMENT OF EB-2020-06 (ARTICLE I COMPLAINT)
11. INITIAL CONSIDERATION OF EB-2020-07 (REQUEST FOR ADVISORY OPINION)
12. PROCESS OF PREPARING DETERMINATION LETTERS AND OPINIONS
13. REVIEW TRAINING SUBCOMMITTEE MATERIALS
14. ITEMS FOR NEXT MEETING'S AGENDA
 - A. REVIEW DETERMINATION LETTER EB-2020-06
 - B. REVIEW DETERMINATION LETTER EB-2020-07
 - C. TRAINING UPDATE
 - D. UPDATE ON COMMUNICATIONS WITH COUNCIL
 - E. REVIEW DRAFT ANNUAL REPORT
15. ADJOURNMENT

COBI ETHICS BOARD

Regular Meeting
Monday, December 21, 2020

VIA ZOOM WEBINAR

Minutes

1. Call to order — Meeting was called to order at 6:32 PM. Present were Karen Anderson, Jim Cash, Dominique Cantwell, Dona Keating, David Mallon, Tyler Weaver, and Andrew Tsoming. Chair Jennifer Hodges has resigned from the Ethics Board and did not attend. David Mallon, Deputy Chair, managed proceedings.
2. Disclosure of conflict of interest — None
3. Acceptance of meeting minutes — November 11, 2020
4. Public comment — Six members of the public provided comment.
5. Consideration of draft revisions to operating rules – David Mallon and Andrew Tsoming to investigate mechanism for City Council to communicate changes to Ethics Program and Operating Rules. Other previous questions remain tabled.
6. Review determination letter for EB-2020-02 (Article II Complaint) – Revision instructions from November meeting were not completed. Resubmitted to subcommittee (Tyler Weaver and Dominique Cantwell). Letter to include explanation for delayed action.
7. Review determination letter for EB-2020-03 (Article II Complaint) — Motion to approve draft and submit to City Clerk for notification by Jim Cash; 2nd Dominique Cantwell.
8. Consideration of EB-2020-04 – Article II Complaint deemed not credible. Motion to submit to subcommittee (Tyler Weaver and Dona Keating) to draft determination letter by David Mallon; 2nd Karen Anderson.
9. Consideration of EB-2020-5 – Article II Complaint deemed credible. Motion to submit to subcommittee (Tyler Weaver and Dominique Cantwell) to draft determination letter by David Mallon; 2nd Karen Anderson.
10. Consideration of EB-2020-06 – Article I Complaint deemed credible. Motion to submit to subcommittee (Karen Anderson and Dona Keating) to draft determination letter and recommendation for mediation by David Mallon; 2nd Tyler Weaver.
11. Update from training subcommittee: Karen Anderson to provide draft program at January meeting.
12. Election of new Ethics Board Chair – Motion to elect Tyler Weaver as Chair to replace Jennifer Hodges by David Mallon; 2nd Karen Anderson. Unanimous.
13. Items for next meeting agenda, January 25 (6:30 - 8:30 PM)
 - a. Revisions to Operation Rules and related communications with Council
 - b. Review EB-2020-02 draft.
 - c. Review EB-2020-04 draft.
 - d. Review EB-2020-05 draft.
 - e. Review EB-2020-06 draft.
14. Next meeting to be rescheduled from January 18 to January 25 from 6:30 PM – 8:00 PM.
15. Adjournment at 8:34 PM

Chair

Date

DRAFT DETERMINATION LETTER

2020-02

DRAFT

January 25, 2021¹

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
Additional Consideration:	November 16, 2020
Final Consideration:	January 25, 2021

DETERMINATION: Referred 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

¹ The Ethics Board notes that this determination has taken more than 45 days. This is due to a reopening of the determination, consideration of the Response, and turnover on the drafting team that led to apparent confusion about the most current draft.

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 Board considered the Response despite the fact it was provided after the deadline set by the Chair. The facts concerning the late Response and the Board's decision to consider it are discussed below, followed by a discussion of the Response itself.

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 more 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. Respondent did not dispute that he had received the emails sent by the Chair prior to the October 16, 2020, meeting, but noted that he had not noticed them or opened them until after the meeting.

At the Board's November 16, 2020, meeting, the Board decided to consider the late Response because this was the first complaint considered under the new Program, and the

manner and form of notice was not yet clear and was at the time under possible amendment by the City Council.

The substance of the Response makes three main arguments. First, it asserts that it should be considered despite its tardiness.

Second, the Response asserts the Complaint is moot because the Respondent had announced his resignation from the Council after the Complaint was filed, on a date that would be effective prior to the Board's meeting on November 16, 2020.

Third, the Response asserts if the Board considers the Complaint, it should be dismissed. The first argument is that the Complainant spoke to the Respondent and others about the use of eminent domain outside of executive session, and that discussion of the use of eminent domain was routinely discussed by the Council outside of executive session. Therefore, according to Respondent, his disclosure of the Complainant's thoughts on eminent domain did not disclose information learned only in executive session.

The Response's second substantive argument is that any ethics violation was minor.

Finally, the Respondent contends that the Complainant's motivation in filing the Complaint was the result of a personal grievance the Complainant has against Respondent due to their past interactions.

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 before 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. Substantive Review of Complaint under Article III, Section B.7

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 not 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. While Respondent disputes the factual basis for the Complaint, the Board does not have an investigatory function, and cannot resolve that dispute. Instead, the Board must consider whether the allegations are credible, and the Board concludes that they are.

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. 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.

As to whether the alleged violation is “inadvertent,” the Ethics Board is limited by its inability to conduct investigations, and the requirement that it rely on the allegations before it. The Complaint alleges Respondent made two knowing disclosures of information he only could have learned during executive session. It may be that an investigation would conclude that this is true, and an investigation might also show the opposite – that disclosure was not initially learned during executive session or knowingly disclosed. 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 the alleged violation was inadvertent. Thus, the Ethics Board cannot dismiss the Complaint outright under Section B.7.d.

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, as the Respondent urges – 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.

DRAFT DETERMINATION LETTER

2020-04

DRAFT

January 25, 2021

NOTICE OF DISMISSAL: EB 2020-04

Submitted to City Clerk:	November 3, 2020
Response Received:	No response received specific to EB 2020-04
Initial Consideration:	December 21, 2020
Final Consideration:	January 25, 2021

I. Summary of Complaint

This Complaint alleges violations of Article II, § A.1, § C, § D.1, and § D.4 of the City of Bainbridge Island Code of Conduct and Ethics Program, effective July 28, 2020 (“the Program”). The Complaint and its supporting documents (collectively, the “Complaint”) consist of the following:

1. Article II (Code of Ethics) Complaint Form;
2. Copy of Article II Complaint Form for EB 2020-03, dated September 15, 2020, from attorney Wyatt Golding of Zientz Chestnut (“the Letter”); and
3. Copy of Exhibits A through G, appended to the Letter.

The Complaint adopts the facts and analysis in EB 2020-03 and the Letter as if set forth verbatim.

A. Alleged violation of Article II, § D.1

The Complaint first alleges that the Respondent, former Councilmember Kolby Medina, violated Article II, § D.1, which provides, in relevant part, that “...a Councilmember ... shall not take any direct official action if they ... a. [h]ave any direct or indirect contractual employment related to the matter [or] b. [h]ave other significant financial or private interest in that matter....”

The Board notes that this section does not apply to any Councilmember “[w]ho fully disclose[s] the conflict of interest ... on the public record ... and the [City] Committee or Commission votes to allow the member to participate in the discussion or the vote.” Art. II, § D.3.b.

The Complaint alleges that the Respondent violated § D.1 because of his professional connections to various persons involved in transactions considered by the City Council in 2018 and 2019. The Complaint discusses two transactions that it alleges are problematic:

- a. In June 2018, the City Council voted to award a consulting contract to the Olympic Property Group (“OPG”) to assist the City in determining how to use and preserve a nearly 14-acre parcel known as the Suzuki property. The allegedly improper connection, discussed further below, centers on the fact that Jon Rose is the President of OPG.
- b. In March 2019, after months of debate about possible alternatives, the City Council approved the purchase of a building owned by what was then known as Harrison Medical Center (“HMC”). The building is intended to be converted into a police station and municipal court. The allegedly improper connection here, discussed further below, centers on the identity of the former President and two board members of HMC.

The Complaint claims that both transactions were tainted by Respondent’s former role as the President and CEO of the Kitsap Community Foundation (“KCF”). KCF is a non-profit organization, based in Silverdale, whose core mission “...is to improve our community’s quality of life by connecting people who care with causes that matter.” KCF website (<https://www.kitsapfoundation.org/about>).

The Complaint alleges that Jon Rose and various members of the Board of HMC are large donors to KCF. Mr. Rose is a “Cornerstone Society” donor to KCF, which requires an annual gift of at least \$1,000 to KCF. He is also a KCF “Foundation Ambassador,” by which he has indicated that he is “willing to share with others how [KCF served his] desire to improve our community” Letter at pp 2-3.

The former president of HMC is also a donor, and two members of the Board of Directors of HMC are Cornerstone Society donors. Apparently three doctors employed by HMC were also donors. Letter at p. 3.

The Complaint’s core allegation under § D.1 is that Respondent suffered from a disabling conflict because of his “potential interest in securing donations that help him perform his job as President and CEO of the Foundation.” Letter at p. 7.

The Complaint notably does not allege that Respondent had any personal or financial interest in either the OPG or HMC transactions, nor that he or any member of his family received any financial benefit as result of his votes in favor of the OPG and HMC contracts. Nor is there any allegation that Respondent was promised or received any other type of benefit because he voted in favor of those contracts.

With regards to whether Respondent disclosed these conflicts prior to his involvement in the transactions, Mr. Golding states that “to the best of my knowledge, [the Respondent] did not disclose” the perceived conflict prior to voting. Letter at p. 3.

B. Alleged Violation of Article II, § A.1

The Complaint also alleges a violation of Article II, § A.1, which states that “no Councilmember ... or any member of their immediate families, shall, directly or indirectly, accept any gift ... for a matter connected with or related to their services or duties.”

The Complaint bases the alleged violation of this section on the same votes and transactions discussed above with regards to § D.1. The Complaint’s main argument is that “[t]he gifts provided to the Foundation are at least ‘indirectly’ beneficial to Mr. Medina, and the contracts to [OPG] and [HMC] are ‘connected with or related to’ donations from leaders of those organizations.” Letter at p. 8.

The Complaint notably does not allege that Respondent he or any member of his family received any financial benefit as result of his votes in favor of the OPG and HMC contracts. Nor is there any allegation that Respondent was promised or received any other type of benefit because he voted in favor of those contracts.

C. Alleged Violation of Article II, § C

The Complaint contends Respondent also violated Article II, § C’s prohibition on the disclosure of “information obtained in executive session.” This centers on Respondent’s alleged disclosure of former Councilmember Ron Peltier’s discussion of the possible use of eminent domain during a 2018 Council executive session covering issues related to the eventual purchase of the former HMC property. Letter at p. 10. This allegation is substantively similar to the complaint brought by Mr. Peltier himself in Ethics Board Complaint 2020-02.

D. Alleged Violation of Article II, § D.4

The Complaint finally asserts Respondent violated Article II, § D.4, which states that “[a]ll Councilmembers are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure.”

The Complaint claims Respondent violated this provision because KCF “receives at least one substantial anonymous donation” and Respondent did not disclose that anonymous person’s identity on his own disclosures. Letter at p. 11.

II. Summary of Response

The Respondent did not submit a Response to EB 2020-04. However, Respondent did respond to EB 2020-03, the substance of which is identical to EB 2020-04. The Board did not specifically consider the response to EB 2020-03 in its determination of EB 2020-04. However, the Board’s conclusions are same as they were in EB 2020-03, because the Board has reached those conclusions independent of the substance of the response to EB 2020-03.

III. Analysis of Complaint

A. Mootness of Complaint

The Complaint was filed on November 3, 2020. Respondent resigned from the City Council effective November 10, 2020. 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 Ethics Board is aware that the Hearing Examiner previously dismissed a complaint because it was filed after the respondents had resigned. While the Program does refer to existing Councilmembers, the Ethics Board has not been clearly granted any specific 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 regards to a complaint, none of which specifically refers to the consideration of a Councilmember's status, nor whether there exists any effective remedy for a violation of the Program.

The Board also notes that Respondent is alleged to have violated Article II, Section C., Confidentiality, which on its face applies to "former Councilmember[s]" such as the Respondent. The Ethics Board therefore cannot dismiss the Complaint on this basis due the Respondent's resignation.

B. Substantive Review of Complaint under Article III, Section B.7

Article III, § 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 not 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, and concludes the Complaint should be dismissed under § B.7.b. and § B.7.c, as explained below.

i. Alleged violations of Article II, § A.1 and § D.1

After a full review of the Complaint and its exhibits, the Ethics Board does not find it credible that Respondent violated either Article II, § A.1 or § D.1. These provisions require that Respondent to have “accept[ed a] gift,” “have substantial ... employment,” or “have a significant financial or private interest” related to his votes on the OPG or HMC transactions. The Complaint does not credibly allege any such gift or interest.

While these sections of the Program are not specific about to the type of interest or gift that triggers a violation, they do require a clear nexus between the personal interests of an official and her official actions. A close reading of these sections demonstrates what is required.

Article II, § A.1 applies only when an official or her family member “accept[s] any gift ... for a matter connected with or related to their services or duties.” This requires that there be a gift, that it was accepted, and that the gift was received in connection with the official’s duties.

Similarly, Article II, § D.1.a requires “employment related *to the matter*” before the official. This requires employment that could be impacted by the official’s actions.

And Article II, § D.1.b requires that the official have some “significant or private interest *in that matter*...” This requires that the official have some personal interest in the outcome of the matter being considered by the official.

The Complaint does not allege any such connection between Respondent’s alleged interests and his votes on the OPG and HMC transactions. Instead, the Complaint points to his “potential interest” in the transactions and claims, without support, that donations to KCF necessarily were “at least ‘indirectly’ beneficial” to the Respondent. Letter at pp. 7, 8.

However, there is no allegation or evidence that that there was any connection of any sort between Respondents’ votes and the contributions to KCF. There is no alleged quid pro quo, and the Complaint specifically does not allege any “corruption.” Letter at p. 1.

The Ethics Board does not find it credible, without any evidence at all, that Respondent personally benefitted from the contributions made to KCF. At most, the Complaint alleges that three individuals gave at least \$3,000 total per year (and others gave less) to an organization that reported \$2,719,131 in total revenue in 2018. Letter, Ex. B. That does not mean that those contributions were insignificant or unappreciated, but the Board does not find it credible that Respondent *must have* received some sort of increased pay or other benefit because of those contributions. It would be irresponsible for the Board to assume such a connection when none has been demonstrated.

The Ethics Board also does not find it credible that the Board of Directors of KCF would have conferred benefits on Respondent because he received donations because of how he voted as a Councilmember, thereby jeopardizing the entire organization's reputation and status.

The Ethics Board notes that unlike EB 2020-03, the Complainant in EB 2020-04 is not anonymous. That fact does not change the Board's consideration of the merits of the Complaint. While the Board appreciates that a member of the public was willing to place their name on the Complaint, that does not change the Board's view as to the credibility of the Complaint's allegations.. As with EB 2020-03, the Complainant cannot claim any knowledge of Respondent's supposed interests or gifts that the Board can consider in assessing credibility. In addition, adopting the facts and analysis verbatim does not assign additional weight to the Letter's statement that "[t]o the best of my knowledge, [the Respondent] did not disclose" the alleged conflicts in question. Letter at p. 3.

However, the Board notes in its assigned educational role that if the Respondent did not disclose his potential conflicts, he should have, even if there was no actual conflict. Not only could the Respondent have spared himself having to respond to this Complaint, he also might have avoided questions about the propriety of the transactions he voted on. The Board's recommendation to the Respondent and other officials is to always disclose anything that could appear to be a conflict, even if it is not, in the interests of avoiding a repeat of the present situation.

The alleged violations of Article II, § A.1 and § D.1 are dismissed pursuant to Article III, § B.7.b.

ii. Alleged violation of Article II, § C

The Ethics Board also finds that the Complaint's alleged violation of Article II, § C is lacking in credibility. Neither the Complainant nor Mr. Golding claim to have any first-hand knowledge of what Councilmember Peltier said in executive session, much less whether that was the only place that he said it. We therefore cannot find anything that this Complaint alleges about these issues to be credible.

The Ethics Board notes that a similar complaint made by Mr. Peltier himself will be heard by the Hearing Examiner because his allegations were credible in ways that the present Complaint is not.

The alleged violation of Article II, § C is dismissed pursuant to Article III, § B.7.b.

iii. Alleged violation of Article II, § D.4

The Ethics Board finds it credible both that KCF has an anonymous donor and that the Respondent did not disclose the identity of that donor in his public financial disclosures. But the Ethics Board also concludes that those facts, even if true, do not constitute a violation of Article II, § D.4.

The alleged violation relates to the Respondent’s public filing requirements under the Washington Fair Campaign Practices Act. The Complaint specifically cites RCW 42.17A.715, which prohibits payments to certain individuals under “fictitious names.” However, assuming RCW 42.17A.715 applies to the Respondent, the Board’s review of this statute indicates that the only payments covered by this section would be payments *to* the Respondent. There is no allegation or evidence that Respondent received any payment from an anonymous donor. And the Complaint does not cite – and the Board is unaware of – any rule that would require the Respondent to disclose a payment made to someone else (other than a family member). The Board therefore concludes that the Complaint has failed to demonstrate facts that would violate Article II, § D.4.

The Ethics Board notes that if the Complainant believes there was a violation of campaign-finance laws, there are other avenues better suited for such an allegation, including the extensive enforcement mechanism set forth in the Fair Campaign Practices Act itself.

The alleged violation of Article II, § D.4 is dismissed pursuant to Article III, § B.7.c.

IV. **Determination**

After review, the Ethics Board dismisses the Complaint.¹

¹ The Board notes that former Chair Jennifer Hodges did not participate in the consideration, discussion of, or voting on the Complaint.

DRAFT DETERMINATION LETTER

2020-05

DRAFT

January 25, 2020

DETERMINATION LETTER: EB 2020-05

Submitted to City Clerk: November 11, 2020
Response Received: November 30, 2020
Initial Consideration: December 21, 2020
Final consideration: January 25, 2020¹

DETERMINATION: Referred to Hearing Examiner for further proceedings

I. Summary of Complaint

This Complaint alleges a violation of Article II. § D.1.b of the City of Bainbridge Island Code of Conduct and Ethics Program, effective July 28, 2020 (“the Program”), which states:

“Except as permitted in Subsections D.2 or D.3 below, a Councilmember ... shall not take any direct official action on a matter if they ... (b) Have [a] significant financial or private interest in that matter...”

The Program, in Article VI, defines “direct official action” in relevant part as “[f]or Councilmembers..., taking action, as defined by RCW 42.030.020, in an open public meeting.” And RCW 42.030.020(3) in turn defines “action” as “the transaction of the official business of a public agency by a governing body including but not limited to ... deliberations, discussions, considerations, ... and final actions. ‘Final action’ means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.”

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. A partial, unofficial transcript of the Council’s October 27, 2020, meeting;
4. Copy of an email sent to the Board by Dick Haugan on October 19, 2020;
5. A copy of Complaint 2019-02 and the resulting determination;
6. Minutes of the Board’s September 21, 2020, meeting; and
7. Minutes of the Board’s October 5, 2020, meeting;

The Complaint as it concerns Respondent Kol Medina, who at the time in question was a Councilmember, centers on the existence of Complaint 2020-03 (referred to as “2020-03”) and

¹ The Ethics Board notes that this determination has taken more than 45 days. However, the Board has reached and finalized its determination as quickly as possible under its regular meeting schedule.

Respondent's actions following the Ethics Board's receipt of 2020-03 and notification to Respondent about 2020-03. The key facts with regard to 2020-03 are that:

1. Respondent in this Complaint was also the Respondent in 2020-03;
2. 2020-03 was submitted by an attorney on behalf of a client whose name was withheld.

The Complaint alleges that at the October 27, 2020, Council meeting, Respondent moved to amend this Board's Operating Rules in a manner that would (among other things) require dismissal of anonymous Ethics Board complaints, including those submitted through a third party, such as an attorney.

The Complaint also alleges Respondent stated:

I will make this motion because that is what one of the complaints against me is, is a complaint by an anonymous person, um, submitted by a law firm. The complainant, the person actually doing the complaining is not named in the complaint nor is their address, even though our Ethics Code very specifically says that the complainant has to name themselves and their address yet this complaint was accepted by the City and is under review in the Ethics Board, but I think it clearly violates the letter and certainly the spirit of our Ethics Code. So, um, I want to take the opportunity to put language in the operating rules that makes it clear that that's not allowable under our Ethics Code.

The Complaint also notes the appearance of former Ethics Board Chair Jennifer Hodges during this portion of the Council meeting and that she spoke during the proceedings.

The Complaint also makes various comments about individuals other than Respondent that are not germane to the Board's decision.

II. Summary of Response

The Response first argues that the Complaint is moot because Respondent resigned from the City Council effective November 11, 2020.

The Response also argues that if the Board nonetheless considers the Complaint, it should dismiss the Complaint because any amendments to the Ethics Board Operating Rules could not be retroactive and therefore could not have resulted in dismissal of 2020-03. Respondent also argues that there is no evidence that he desired his changes to apply to 2020-03 because it had already been accepted by the City Clerk. Respondent also argues that because he later proposed, on November 10, 2020, that the Council table his motions to amend the Operating Rules, knowing that the Board would consider 2020-03 at its meeting on November 16, 2020, he could not have intended his motions or his vote to affect the Board's consideration of 2020-03.

The Respondent also expresses his belief that the Complainant is motivated by personal animus towards Respondent and is an attempt to use the Program to harm Respondent.

III. Analysis of Complaint

A. The Respondent's Standing

The Complaint was filed with the City Clerk on the morning of November 11, 2020, a few hours before Respondent officially left the Council. The Ethics Board is thus once again 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 Board has previously considered this same issue with regard to complaints 2020-02, 2020-03, and 2020-04, and it does not reach a different conclusion now. 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. Section III. 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.

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 before 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. Substantive Review of Complaint

Article III, §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 (§ B.7.a);
2. The Complaint lacks reasonable credibility (§ B.7.b);
3. The facts stated in the Complaint, even if true, do not constitute a violation of Article II (§ B.7.c);
4. The facts stated in the Complaint, even if true, would not 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 (§ 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 (§ B.7.e).

Otherwise, Article III, § 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. The Ethics Board has considered each of the possible options in Article III, § B.7.

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

Dismissal of the Complaint under § 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. The Ethics Board has concluded that the Complaint’s substantive allegations are reasonably credible, as they are based on an unofficial transcript of the meeting. The Board notes Respondent has not disputed the transcript, nor any of the facts, but rather disputes the significance what was allegedly said and done.

Under § 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, are that: (1) on October 27, 2020, Respondent knew he was the subject of 2020-03, which was an anonymous complaint submitted on behalf of an attorney, (2) in the presence of the Ethics Chair, Respondent successfully moved to temporarily amend the Board’s Operating Rules to require dismissal of anonymous complaints submitted on behalf of an attorney, and (3) Respondent stated he was making his motion “because that is what one of the complaints against me is, is a complaint by an anonymous person, um, submitted by a law firm” without indicating that his changes would not or should not apply to 2020-03. If these facts are true, Respondent may have violated Article II, § D.1.b. Respondent had a personal interest in 2020-03, and it is alleged that he specifically tied his motion to the fact that he had received 2020-03. This may constitute a violation of Article III, § D.1.b., even if it is true that that the Council could not have legally required the Board to dismiss 2020-03 at that stage of the proceedings, or that it was not Respondent’s intent to influence the Board’s consideration of 2020-03. The Board further notes that Respondent made his comments, brought his motions, and held a vote in the known presence of former Chair Hodges, thereby raising at least a question about whether Respondent sought to influence the Board’s treatment of 2020-03. Therefore, the Ethics Board cannot dismiss the Complaint under § B.7.c.

Under § 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.

Respondent does not contend that any violation was inadvertent or minor, and the Ethics Board does not have any reason to believe that any violation was inadvertent or minor.

The Ethics Board also has no reason to believe that any breach has been adequately cured. While Respondent has not specifically argued this point, he has argued that his actions of October 27, 2020, were effectively mooted by his actions on November 10, 2020, in which he moved to table the issue of permanently amending the Board's Operating Rules. But that does not change nor cure what happened on October 27, 2020. It does not cure the possible use of Respondent's public position to protect his personal interests, and it does not cure the possible perception that Respondent's actions affected the Board's consideration of 2020-03. On this later point, the Board notes for the record that while it did ultimately dismiss 2020-03, the Board's determination was not swayed by the Respondent's actions on October 27, 2020, and the Board in fact concluded that it could *not* dismiss 2020-03 because it was anonymous.

The Ethics Board cannot dismiss pursuant to § B.7.d.

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

As discussed above, the Board finds that the Complaint appears credible and that the allegations contained in the Complaint appear to violate of Article II § D.1.b. Under § 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 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 Response; and (3) this Determination Letter.

ARTICLE I COMPLAINT

2020-06

Article I (Code of Conduct) Ethics Complaint Form

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Conduct (Article I) 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 Clerkatcityclerk@bainbridgewa.gov. By submitting this form, you are indicating your willingness to participate in mediation (i.e., “reconciliation”) to resolve this dispute. Should mediation be offered, and you do not agree to participate, your complaint will be dismissed pursuant to Article III, Subsection A.5.b of the Code of Conduct and Ethics Program.

II. Your Contact Information:

Name: Jane Lindley

Address: 14110 Sunrise Drive NE, Bainbridge Island, WA
98110

III. Article I 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 Michael Pollock

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

Core Values:
B1, B2, B3, C2.b

C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Conduct (Article I) 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 Pollock just sent an email (below) that:

- makes me concerned for my safety as he is clearly trying to paint me as a racist and put me in harms way; and also,
- pigeonhole anyone who might vote for me as a racist, with a subject line and article that are completely unrelated to Bainbridge or the process we are in regarding the North Ward council seat; [SEP]
- makes me concerned for what else Pollock might do if he's willing to send inflammatory emails to not just me, the council but also commissioners, and one of our state Reps - he's starting *real fires* to ensure his pick for council wins. [SEP]

-----Original Message-----

From: Michael Pollock

Sent: Dec 10, 2020 9:40 AM

To: Council , "Kitsapcommissioners@co.kitsap.wa.us" , Brenda Fantroy-johnson , "janelindley@earthlink.net" , Ashley Mathews , "info@electtarrasimmons.com"

Subject: How 'Good White People' derail racial progress-no replies please to stay consistent with Open Public Meetings Act

Hi Bainbridge Island Council, County Commissioners, BI Council Wannabes and our newly elected rep Tarra Simmons. I thought this article below provides some good food for thought regarding race equity, housing and the environment.

I have also included the County Commissioners in this email since they may well be deciding who are next BI Council member is since we are deadlocked, and issues of race equity, the environment and housing seem to be where the

council is split, and also because these issues extend into all of Kitsap County.

Since we are deadlocked on who to select for our seventh Council member, I would also like to entertain the idea of a debate between Ms. Fantroy-Johnson and Ms. Lindley on the issues of race equity, the environment, housing and climate change. It would be something that the Council and the Commissioners could watch, and which might help everyone reach a decision as to which candidate best represents the interests of the Bainbridge Island electorate. Also below are links to the two candidates applications.

I would also like the Bainbridge Island Council to consider a 2 hr workshop on race equity, housing and the environment in the near future. This article touches on some of those issues and form a good basis for discussion.

Just a reminder to all that Open Public Meeting Act requirements preclude a quorum of an elected body from having an email conversation, as that constitutes a meeting, so this email is informational only and please do not respond to it.

Thanks,

Michael M. Pollock, Ph.D.
Councilmember, City of Bainbridge Island

<https://www.cnn.com/2020/08/01/us/white-liberals-hypocrisy-race-blake/index.html>

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: Thursday December 10th 2020

Place: Bainbridge Island

Signature: Jane Lindley 360-473-8205

REQUEST FOR ADVISORY OPINION

2020-07

**Advisory Opinion
Request Form**

I. Introduction:

Under Article III, Section D of the Code of Conduct and Ethics Program, only Councilmembers and members of City Committees and Commissions may submit to the City Clerk a request for an advisory opinion from the Ethics Board and only for the reasons outlined in Article II, Section D. Councilmembers and members of City Committees and Commissions seeking to submit a request for an advisory opinion should complete this form and submit it to the City Clerk at cityclerk@bainbridgewa.gov.

II. Requestor Info:

Name: Michael Pollock Are you a (check one):
☒ Councilmember; or
Date: 12/30/20 ☐ Member of a Committee or Commission

III. Request for Advisory Opinion

A. Please check one of the following types of requests:

☒ I request an advisory opinion from the Ethics Board as to whether my own behavior, described below, has violated or might in the future violate the Code of Conduct (Article I) or the Code of Ethics (Article II).

☐ I am a Councilmember and I request an advisory opinion from the Ethics Board concerning the applicability of the Code of Ethics (Article II) to the hypothetical circumstances and/or situations described below related to the actions, or potential actions, of a Councilmember or a member of a City Committee or Commission.

☐ The City Council has authorized me to request an advisory opinion from the Ethics Board regarding the City policies or practices described below in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).

☐ My Committee or Commission has authorized me to request an advisory opinion from the Ethics Board regarding the operating rules or practices described below in relation to the Code of Conduct (Article I) or the Code of Ethics (Article II).

B. Advisory opinions issued in response to either of the first two types of requests shown above will not include identifying information as to the requestor or, as applicable, the individual(s) whose conduct is the subject of the opinion unless otherwise agreed in writing by the requestor and, as applicable, the subject individual(s). If there is agreement that the opinion should include identifying information, please include, as an attachment to this request, a statement signed by you and, as applicable, all subject individuals indicating agreement that such identifying information may be included in the opinion.

C. Please provide the facts relating to your request indicated above. Please attach additional pages as needed. If other records exist that relate to your request, please attach them to this form as well. See attached pdf.

This is a request for a code of conduct educational advisory opinion concerning emails I recently sent regarding issues of racial equity in the context of which of two finalists to appoint to a vacant seat on the Bainbridge Island City Council and the follow-up written responses sent out by one of the finalists, including a code of conduct complaint to the ethics board. Additionally, I watched the November ethics board meeting, and saw that there was a struggle as to whether to refer the finalist's code of conduct complaint to mediation or to write an advisory opinion, with the final decision to refer to mediation. By my submittal of this request, the ethics board will now have an opportunity to issue an advisory opinion on the matter as well, though I construe the issue more broadly and provide extensive background and context to help the ethics board in the writing of their considered opinion.

1a. I seek advice from the ethics board as to how to have respectful, yet meaningful discussions on race equity, diversity and inclusion that do not simply devolve into a discussion of white people's hurt feelings and how to make white people feel better about their position of privilege¹⁻². I seek ethical advice as to how to keep discussions focused on how to take meaningful, actionable steps to address racial inequities and to increase diversity and inclusiveness in our local government, while respecting the core values of respect, integrity, trust etc. that have been adopted by the City of Bainbridge Island.

Request 1a centers around a basic question: Is it a violation of our government's adopted Core Values if we discuss issues of race equity, diversity and inclusiveness in such a way that makes white people uncomfortable? If not, then how do we talk about these issues, and in particular, how do we talk about them in such a way that we address the feelings of guilt, shame, fear and the tendency towards personalization that naturally arise when a predominantly white community discusses issues of race equity, diversity and inclusiveness (RDI)¹⁻².

1b. I also seek advice as to whether from a process perspective, there was a code of conduct violation by the act of reaching out to the County Commissioners to suggest a debate between the two finalists on issues of race, the environment, climate change, etc. as a means of resolving the 3-3 tie?

Background

I was the author in an email chain that included two emails by me and one by former Mayor Val Tollefson (see Appendix 1 for emails) on the issue of how to proceed with breaking a 3-3 deadlock between the six current council members as to whether to appoint a black woman or a white woman to the vacant seat on the City Council. The email exchange was subsequently followed by series of communications by the white female applicant in which she:

- 1) Withdrew her name from consideration for the open seat,
- 2) Accused me of painting her and as a racist,
- 3) Accused me of painting her supporters on the council as racist,
- 4) Suggested that her safety is now a concern

Most of these accusations were asserted by the white female applicant (hereafter the “complainant”) through a code of conduct complaint filed to the ethics board (see Appendix 2), but also include an interview with a local newspaper, facebook quotes, and her withdrawal letter^{3,4}. These sentiments were also reinforced in a facebook post by Mayor Leslie Schneider, in which she also supported the use of the term “race-baiting” to describe my actions. Mayor Schneider’s actions also merit consideration as to whether she conducted herself properly, but that is not the focus of this advisory opinion request.

The complainant’s primary assertion appears to be that in effect, the spirit and intent of my email is inconsistent with my responsibility to be respectful in my use of language. That is, by simply bringing up the issue of race equity, that was akin to calling her and her supporters racist and that made her and her feel unsafe and that this was disrespectful (Unsafe from what was never specified)^{1,5}.

My emails were worded to focus discussion on issues of racial equity, diversity and inclusiveness into the debate on the merits of the two finalists for the North Ward vacancy appointment. My emails intentionally did not identify the complainant by name, nor were council members or supporters of the complainant mentioned by name. Also note that absent from my emails was the word “racist” (see Appendix 1).

Avoidance of the term “racist” was deliberate because most regrettably, certain white people take grave offense at the idea that they might be racist. When I do use the word “racist” or “racism” I use it in terms of the definition provided by the Washington State Supreme Court (see General Rule 37), in which they recognized several types of racism, including purposeful racism, unintentional racism, institutional racism and unconscious racism⁶. So in the context of how the State Supreme Court thinks about racism, arguably, we are all racist to one degree or another. Personally, I take no issue with being called racist, and if someone suggested I was racist, I would want to unpack, explore and evaluate the basis for that statement.

My emails are part of a larger discussion on issues of race equity, diversity and inclusiveness

The assumptive assertion that my emails were intended to convey that the complainant and those that supported her are “racist” and that they now feel some sort of a threat, improperly derails the discussion of RDI by mischaracterizing my emails as a personal attack with malicious intent. Such tactics shift the debate from one of race equity to one of how white people feel threatened by race equity discussions. Such behavior is diversionary and only serves to re-enforce the systemic racism that keeps white people at a socio-economic advantage over people of color by muzzling attempts at RDI discussions^{1,2,5,7}.

The reality is that my emails communicated to many in our community the broader need to advocate for racial equity at the local level. The advocacy in my emails are fundamentally rooted in the sweeping progressive attitude of racial equity and social justice and is largely informed by

national and regional discussions on anti-racism, published literature on racial equity, white fragility, institutional racism, and the Black Lives Matter movement ^{1,2,5, 8,9,10}.

The desire for greater racial equity, diversity and inclusiveness is also strongly embraced by the constituents I serve, as evidenced by the record-breaking number of citizens who either came to a city council meeting to speak on behalf of the black finalist, Brenda Fantroy-Johnson, or the record-breaking number of citizens who wrote to the council in support of her appointment. Nearly 75 emails of support poured in for Ms. Fantroy-Johnson and 16 people stood before the Council and testified in support of her. Many of the supporters spoke specifically on their desire for greater racial equity, diversity and inclusion in our government as a basis for their support.

The interpretation of my emails as personal and threatening attacks represents, in and of itself, the engrained web of subjugation, whereby white people are viewed as superior to their black and brown neighbors, and are therefore entitled to complain when discussions on racial equity, diversity and inclusion arouse feelings of fear, guilt, anger, or shame. This tendency provides heightened protection of white people from uncomfortable debates on institutionalized racism and implicit bias, and seeks to excuse white fragility, particularly when expressed by white women.

Particularly applicable to this discussion is the concept of 'white women's tears' ^{1,7 11}. White women's tears are considered an insidious form of (often unintentional) racism. This is because it is recognized that they will summon more attention, help, and "recentering" of the white women's (emotional) needs than any other type, from men specifically because of, as DiAngelo¹ has it, "their conditioning under sexism and patriarchy," ostensibly to care about and want to protect women. This means that, even if they don't mean to, women who (metaphorically-speaking) shed white women's tears are committing a racist act by being too delicate to confront their own complicity in racism and thus putting themselves at the center of concern and interest ¹¹.

A timely example of this phenomenon was during the November ethics board meeting, when a white male member opined that I should apologize to the white female complainant (presumably for my emails that made her feel like a racist). It seemed to be an emotional response to the emotional distress that he felt from the white female complainant and possibly the distress the white females on the city council felt when confronted with a discussion about race equity and their own potential complicity in racism. There was no reason provided by the white male as to what I had actually done that warranted an apology to the complainant, but since the code of conduct complaint centered around the fact that my emails made her feel "painted as a racist" and concerned for her safety, presumably I was to apologize for making her feel like a racist and therefore making her feel unsafe (again, there was no specificity as to what she feared).

Generation after generation, the impact of enslavement and racial prejudice contributes to a mixture of unequal and bigoted standards. It suggests that white people get to operate with practical impunity and are licensed to cast blame upon those who advocate for racial equity, including those burdened by institutionalized racism, as if people of color and their advocates

are supposed to embrace the white privilege to complain about the difficulty of discussions about race^{2, 12}.

At the same time, the strict and self-defeating expectations that marginalized people are held to all but guarantee defensive blowback for those who dare challenge the existence of racial inequities, especially for those who compete with their white counterparts for positions of power within a system that was consciously designed to disadvantage them^{1,2,9,12}.

The truth is that people of color in America are in a constant state of unease. Implicit in my emails and the referenced citations is the assertion that those of us in positions of power can increase our aptitude to confront and persist through discussions of race equity, diversity and inclusiveness^{2,12}.

The severe reaction by the complainant, and the extended efforts by council members who supported the complainant to punish me, highlights the complexities of RDI discussions in American society, and illustrates how deeply ingrained implicit biases truly are.

The fight for racial equity is a fight for social justice; racial justice requires that white people surrender some of their power and resources to balance the inequities perpetuated by our social, political, and economic systems.

The CNN article⁵ attached to my email that is the subject of this complaint quotes author Shannon Sullivan, a woman of color: *"I want to hear about justice...I don't want to hear about how we make White people feel comfortable again."*

This quote illustrates an essential truth, that when white people engage in discussions of racial equity, the conversation often gets hijacked and the focus turns to how white people feel. But such diversions illustrate a main point of the CNN article (and my emails), which asserts that **until white people are willing to give something up, there will be no true racial awakening in America**. The first and most obvious privilege that white people must willingly surrender is the privilege to complain when racial debates trigger feelings of discomfort and resentment. (emphasis added).

While the complainant's feelings may have been hurt and she may have felt discomfort during the debate over the extent to which the issues of racial equity, diversity and inclusion should influence the outcome of the appointment process, such feelings should not end the conversation. Conversations about race that probe white peoples' role in perpetuating systemic and institutional racism is likely to continue to upset the status quo, which illustrates the need to continue to have such conversations.

When citizens through their elected leaders argue for racial equity, the collective response by City leaders (e.g. the ethics board and the city council) should avoid giving greater deference to the plight of white people's discomfort about discussions of race over the historic plight of blacks and other people of color; otherwise the City may appear to some as promulgating the unequal

treatment of black and other people of color in our community, and this can cause people to lose faith or trust in their government to meaningfully address difficult issues (see Bainbridge Island Ethics Board Advisory Opinion 2018-03)¹³.

Content aside, was sending emails to County Commissioners a code of conduct violation?

Regardless of the email content, as a matter of process, was it a code of conduct violation to submit an email to County Commissioners during a Council vacancy appointment process when the Council was deadlocked as to which of two candidates to appoint?

The Council's process for filling the council vacancies (there have been three in the past few years) does not include a process for resolving a tie vote. Further, state law stipulates that County Commissioners are to make the appointment if a city council fails in that duty. There are no restrictions on Council Member communications with the County Commissioners related to and during the appointment process or in fact for any matter whatsoever, as we are their constituents.

Note also that I, along with council member Joe Deets, offered what we thought was a fair solution to resolve the 3-3 tie by sending it out to the general citizenry for an advisory vote. Unfortunately the three council members that supported the complainant declined that solution.

Because there was no process for resolving a tie vote, council was unsure how to proceed. There was no path forward, and a solution needed to be found. Other council members were similarly inventing alternatives as well.

If the ethics board were to find that sending emails to County Commissioners constitutes a problematic action, similar to AO 2018-02, the ethics board might recommend that the Council adopt an improved process for dealing with tie votes on an appointment, one that is "fair, equitable, and respectful of citizens who apply"; The complainant's concerns might be useful to inform that policy debate. Such a recommendation by the ethics board might inspire Council to discuss and potentially adopt language to clarify what constitutes appropriate action in the appointment process, so as to better facilitate Council appointment processes in the future.

Referenced Material and Further Reading

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13. City of Bainbridge Island Ethics Board Advisory Opinion. Case # 2018-03. Available online at <https://www.bainbridgewa.gov/DocumentCenter/View/11364/2018-03-Johnson-Advisory-Opinion>

Appendix 1 Email exchange regarding BI council seat vacancy 3-3 deadlock.

Re: How 'Good White People' derail racial progress-no replies please to stay consistent with Open Public Meetings Act

?

You forwarded this message on Wed 12/16/2020 2:57 PM

MP

Michael Pollock

Fri 12/11/2020 9:38 AM

?

To:

- Council;
- Kitsapcommissioners@co.kitsap.wa.us;

+9 others

Honorable Val Tollefson,

Thanks for having the courage to speak out on your convictions. The key points in the article I sent out (re-attached below), are:

1. that if we truly want race equity, we (white people) are going to have to turn over power to black people and other people of color and,
2. We are going to have to them provide housing and an option for homeownership, which is the primary gateway to wealth in the middle class and,
3. We are going to have to provide access to good education, which again is a gateway to wealth.

I grew up with a feminist mother and three older feminist sisters, one who was gay, which at that time was a lot scarier than it is today. I was infused with the feminist argument that if we truly wanted equality between the sexes, then men were going to have to turn over power to women, that we needed to break the "glass ceiling" They didn't use the term white, but there weren't a lot of people of color leading the feminist movement back in the day and it was essentially a fight over power between white men and white women.

Regarding the Bainbridge Island City Council, with four women on the council, and a fifth likely to soon be joining us, I think we can safely say when it comes to women, the glass ceiling has been shattered. Not so when it comes to people of color, particularly people who are black. As far as I know, in the entire history of Bainbridge Island/Winslow, there has never been a black city council member, and there have been very few in our administration, particularly in management. I am only aware of two people of color every serving on the council, Nezzam Toulee and Rasham Nassar, both of middle-eastern descent.

So now we have three white women on our City Council arguing for putting a fourth white woman on the City Council over a black woman. Viewed through a race equity lens, and given the recent

rise of the Black Lives Matter movement, to me that seems entirely inappropriate. In the attached article, I think it makes an analogous point with the feminist movement; just as white men had to give up to white women a seat at the decision-making table for their to be greater equity between the sexes, white men and white women now have to give up seats at decision-making tables to people of color for there to be greater equity between the races.

Regarding my calling card, it is a willingness to tackle challenging issues and to speak truth to power, and doing it with a sense of joy, purpose and humor. This is perhaps best summed up by a recent email sent to me by a colleague from election night, quoting Molly Ivins:

With an administration that delights in every form of cruelty, it's easy to believe that the current situation is so grim the only appropriate way to face it is grimly. But if they rob us of our capacity for joy, they've stolen one of the precious tools of survival and resistance. So on this somber night in somber times, I offer this reminder from Molly Ivins: "Keep fightin' for freedom and justice, beloveds, but don't you forget to have fun doin' it. Lord, let your laughter ring forth. Be outrageous, ridicule the fraidy-cats, rejoice in all the oddities that freedom can produce. And when you get through kickin' ass and celebratin' the sheer joy of a good fight, be sure to tell those who come after how much fun it was."

In Peace, Joy and Laughter,

Michael M. Pollock, City Council member, Bainbridge Island

From:G Val Tollefson <outlook_84FD12159C1097F5@outlook.com> on behalf of G Val Tollefson <val@tollefsons.us>

Sent:Thursday, December 10, 2020 11:44 AM

To:Kitsapcommissioners@co.kitsap.wa.us <Kitsapcommissioners@co.kitsap.wa.us>

Cc:Tarra Simmons <info@electtarrasimmons.com>; Drew Hansen <drew@drewhansen.com>; Council <Council@bainbridgewa.gov>

Subject:Bainbridge City Council vacancy

Commissioners,

As you certainly know by now, the Bainbridge Island City Council is currently deadlocked over the appointment to fill the vacancy left by Kol Medina's departure from the scene.

Michael Pollock sent you an email this morning with an attachment which no-so-subtly suggests that the Councilmembers who do not support the candidacy of Brenda Fantroy-Johnson are racist. This sort of irresponsible broadside has unfortunately become Mr. Pollock's calling card during his current service on the Council, but couldn't be further from the truth.

Certainly each Councilmember can make a decision on this appointment for any reason. Given the current political climate and the local and national heightened awareness of the racism that pervades our society it is understandable if some might choose to support the black candidate over the white candidate in the belief that such an outcome without consideration of other factors serves the cause of “racial equity”. I suggest rather that “racial equity” exists when race is no longer the determinate of the outcome.

In the case of the decision before the Bainbridge Council, both candidates are qualified. Jane Lindley, however, is clearly the best qualified to fill this position at this time. Jane’s involvement in the civil life of the Bainbridge community over the past years, including service and advocacy on environmental issues and substantive involvement in the development of the City’s Comprehensive Plan make her uniquely qualified. Ms. Fantroy-Johnson’s relatively recent involvement is laudable, and I hope that she continues to invest in her community, but her relevant experience at this point is scant.

Bainbridge Island has taken steps to “up its game” in the area of racial equity, and like the rest of the country it has plenty of room to improve. Selecting the lesser-qualified candidate for this position is not the way to accomplish that.

Hopefully, our Council will figure this out on its own after all, but if not thanks for taking these comments into consideration.

Val Tollefson

Val Tollefson

From: Michael Pollock

Sent: Thursday, December 10, 2020 9:40 AM

To: Council <Council@bainbridgewa.gov>; Kitsapcommissioners@co.kitsap.wa.us
<Kitsapcommissioners@co.kitsap.wa.us>; Brenda Fantroy-johnson <brendaremade@yahoo.com>;
janelindley@earthlink.net <janelindley@earthlink.net>; Ashley Mathews
<ashleymathews104@gmail.com>; info@electtarrasimmons.com <info@electtarrasimmons.com>

Subject: How 'Good White People' derail racial progress-no replies please to stay consistent with Open Public Meetings Act

Hi Bainbridge Island Council, County Commissioners, BI Council Wannabes and our newly elected rep Tarra Simmons. I thought this article below provides some good food for thought regarding race equity, housing and the environment.

I have also included the County Commissioners in this email since they may well be deciding who are next BI Council member is since we are deadlocked, and issues of race equity, the environment and housing seem to be where the council is split, and also because these issues extend into all of Kitsap County.

Since we are deadlocked on who to select for our seventh Council member, I would also like to entertain the idea of a debate between Ms. Fantroy-Johnson and Ms. Lindley on the issues of race equity, the environment, housing and climate change. It would be something that the Council and the Commissioners could watch, and which might help everyone reach a decision as to which candidate best represents the interests of the Bainbridge Island electorate. Also below are links to the two candidates applications.

I would also like the Bainbridge Island Council to consider a 2 hr workshop on race equity, housing and the environment in the near future. This article touches on some of those issues and form a good basis for discussion.

Just a reminder to all that Open Public Meeting Act requirements preclude a quorum of an elected body from having an email conversation, as that constitutes a meeting, so this email is informational only and please do not respond to it.

Thanks,

Michael M. Pollock, Ph.D.

Councilmember, City of Bainbridge Island

<https://www.cnn.com/2020/08/01/us/white-liberals-hypocrisy-race-blake/index.html>



[White liberals' dangerous hypocrisy on race - CNN](https://www.cnn.com/2020/08/01/us/white-liberals-hypocrisy-race-blake/index.html)

Any attack against entrenched racism will run into a formidable barrier: White people who support progressive causes yet oppose efforts to make their schools and neighborhoods more diverse.

www.cnn.com

Appendix 2. Code of conduct complaint

Article I (Code of Conduct) Ethics Complaint Form

I. Introduction:

Individuals seeking to submit an ethics complaint alleging a violation of the Code of Conduct (Article I) 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 Clerkatcityclerk@bainbridgewa.gov. By submitting this form, you are indicating your willingness to participate in mediation (i.e., "reconciliation") to resolve this dispute. Should mediation be offered, and you do not agree to participate, your complaint will be dismissed pursuant to Article III, Subsection A.5.b of the Code of Conduct and Ethics Program.

II. Your Contact Information: (redacted)

III. Article I 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 Michael Pollock

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

Core Values: B1, B2, B3, C2.b

C. Please describe the facts supporting your allegation that the Respondent has violated the sections or subsections of the Code of Conduct (Article I) 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 Pollock just sent an email (below) that:

- makes me concerned for my safety as he is clearly trying to paint me as a racist and put me in harms way; and also,
- pigeonhole anyone who might vote for me as a racist, with a subject line and article that are completely unrelated to Bainbridge or the process we are in regarding the North Ward council seat;
- makes me concerned for what else Pollock might do if he's willing to send inflammatory emails to not just me, the council but also commissioners, and one of our state Reps - he's starting *real fires* to ensure his pick for council wins.

ETHICS COMPLAINT PROCESS

